Iowa / Laws, statutes, etc

IOWA LAW RELATING

TO

Collateral Inheritance Tax

A complete compilation of the Iowa Statutes relating to Collateral Inheritance Tax with Annotations from the Courts of Iowa and New York

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Including excerpts from Treaties now existing between the United States and Foreign States

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EDITED BY B. J. POWERS
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PREFACE.

A Collateral Inheritance Tax Law has been in force in Iowa for twenty-two years. During this time, as is the case in all similar laws, many legal questions as to its interpretation have arisen and have been decided by the courts.

I am convinced that a compilation of the Collateral Inheritance Tax Laws, and a digest of the cases relating thereto, is not only necessary to the proper administration of this office, and those interested with it in the collection of the Collateral Inheritance Tax, but will be of incalculable assistance to administrators, executors, and attorneys generally throughout the State who might be interested in the operation of this law; so, with the approval of the Executive Council of Iowa, I have had this pamphlet prepared.

It contains the Iowa Collateral Inheritance Tax Law and all important decisions relating to collateral inheritance taxation generally.

E. H. HOYT,
Treasurer of State.

EDITOR'S NOTE.

This compilation contains the entire statute law of the State of Iowa upon matters relating to the Imposition and Collection of the Collateral Inheritance Tax. In addition it reviews every case decided by our supreme court on the subject.

The sections have been annotated in as brief and concise manner as possible in keeping with an authentic review of the facts and points decided. Annotations from the courts of New York, Massachusetts, Michigan, Minnesota and other states have been given to assist in getting a proper view of the general rule of American courts on this subject.

Forms have been prepared to the end that there may be uniformity of procedure in the imposition and collection of the tax.

No attempt has been made to answer every possible question that might arise, but such matters have been considered as are of common occurrence and of real importance.

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CHAPTER I

INHERITANCE TAX—ITS HISTORY—KINDS OF TAX—EARLY IOWA STATUTES.

Early Inheritance Tax—Inheritance tax is said by Gibbon, the historian, to date back to the days of Emperor Augustus, and that he suggested it to the Roman senate as a means of supporting the army, and that it was imposed at the rate of five per cent upon all legacies or inheritance above a certain value, but that it was not collected from the nearest relatives upon the father's side; and that it was fruitful as well as comprehensive. 1 Gibbon's Rome, 133.

Another writer tells us that Augustus "worked the trick of finding the proposal" for inheritance tax "among Caesar's papers," which are now considered as having been forged, and that he succeeded in getting the Roman senate's approval to the law in 44 B. C. Bender's Federal Revenue Law, page 96.

Mr. Max West in his scholarly work on "Inheritance Tax", page 11, tells us that the Romans probably borrowed the idea of inheritance tax from the Egyptians, with whose financial methods they were well acquainted. Continuing he states: "There is evidence that Egypt had some sort of an inheritance tax at this time (654-616 B. C.), of which the rate was probably not less than a tenth, and from which even direct heirs were not exempt. A papyrus has been found which relates that a certain Hermias was sentenced to pay a heavy penalty for failing to pay the tax on succeeding to his father's house. Another inscription records a sale of property by an old man to his sons at a nominal price, apparently for the purpose of evading the inheritance tax." Hence schemes to evade the tax are nothing new to the world as disclosed by the records just referred to.

Federal Inheritance Tax—It is well for all persons interested in an estate exceeding in value the net sum of $50,000.00 to see to it that the federal inheritance tax is paid. Failure to report such an estate for taxation results in additional penalties and under certain conditions a fine or imprisonment may be assessed. For further information see Act of Sept. 8, 1916, c. 463 sec. 200 as amended by Act of March 3, 1917, c. 159, sec. 300 and by Act of October 3, 1917, c. 63, sec. 901; United States Compiled Statutes, Title 35, Chap. Ten A, and 1917 Temporary Supplement. In considering the "debts" of an estate the rule, as announced by the Court of Appeals of New York, is that the federal inheritance tax is not to be deducted as a debt of the estate. It is not a tax upon the property but a tax on the right of the beneficiary's succession thereto. Matter of Gihon 169 N. Y. 443; 62 NE. 561.

Taxes due a state are not to be deducted as "debts" of an estate in estimating the value of an estate for the purposes of the Federal In-

heritance Tax. Such was the ruling of the Treasury Department under date of September 1, 1917.

This compilation is not intended to cover any features of the Federal Inheritance Tax statutes and therefore those interested in estates subject to such a tax should consult the statutes.

Kinds of Inheritance Tax—In many states, laws similar to those of Iowa are designated as "transfer tax laws," "legacy tax laws" and sometimes the tax required by such statutes are spoken of as "probate duties" or again "death duties." The laws vary in their application but in general the intention is to provide that the state may collect a certain per cent of the value of the property transferred as a succession tax. By the term "succession tax" it is meant a tax on the right to take property on the death of another. This tax is uniformly held to be a tax, not upon the property, but a tax on the right of succession thereto. In Re Estate of Stone, (1906) 132 Iowa 136; 109 NW. 445; 10 Ann. Cas. 1033.

In Iowa the tax is not collected from direct heirs, (except as provided in sec. 1481-a42, Supplement, 1913, page 41 hereof) but is collected in case the one entitled to the property is a collateral heir, or a stranger in blood to the decedent. In many states this succession tax is collected from everyone who derives any interest from the estate of the decedent, including the widow and the children. In some states, an exemption of $10,000.00 is allowed to the widow and to each of the children.

There is a growing tendency to increase the amount of this tax and to include a greater number of persons within its provisions. Such laws are on the statutes of some thirty-six or eight of our states, and the succession tax is fast becoming a source of great revenue.

Source of Iowa Collateral Inheritance Statutes—The early Iowa statutes on collateral inheritance were modeled after those of the state of New York, and therefore the decisions of the New York courts are of great value to the courts of this state in interpreting our statutes. In view of this fact, an endeavor has been made to give some authority from the courts of New York aiding in the interpretation of each section. Since the enactment of the Iowa statutes, New York has made a number of important changes in her laws on such taxation.

It may be of interest to learn that Utah has copied the Iowa statute almost in its entirety. See Title 36, sec. 1220X of Compiled Statutes of Utah and also case of Dixon v. Ricketts, 26 U. 215; 72 Pac. 47.

In 1896, the 26th G. A. of Iowa, passed an act consisting of fifteen sections relating to collateral inheritance tax. These were inserted into the Code of 1897 under Title VII. Chap. 4, sections 1467 to 1481 inclusive. This law was held to be unconstitutional for the reason that no notice of appraisement was provided for, or required to be given, to the heirs, devisees or others interested in the estate, as to the time or place when the property of the estate would be appraised. See Ferry v. Campbell, (1900) 110 Iowa 290; 81 NW. 604; 50 L. R. A. 92. However, before this case was decided by the supreme court, the 27th G. A. enacted a provision for notice and removed the objection to the unconstitutionality of the act. Hence, when the supreme court reached the appeal in Ferry v. Campbell, *supra*, it held that while the lower court was right in holding

the act unconstitutional at the time of trial, yet since the objection had thereafter been removed by competent legislation, the supreme court would reverse the lower court and hold the act to be in accord with our constitution.

There were a number of changes made from time to time in the various provisions of this act up until the year 1911 when the 34th G. A. by enactment of Chap. 68, repealed all former statutes and amendments, except eight sections spared in the Code of 1897, and enacted as substitutes therefor forty-eight new sections on the same subject. Two of these sections, numbers one and twenty-four, have been amended by having additions made thereto but otherwise the act still remains as originally enacted. The foregoing constitutes the entire statute law of Iowa upon the subject of collateral inheritance.

But in case an alien is involved, whether as testator, legatee or heir, it should be remembered that the provisions of any treaty existing between the United States and such alien's country is to take precedence over any statutes of the state of Iowa. The matter of Treaties is considered in a separate chapter in this work and should be referred to when dealing with the rights of an alien.

The Right of a State to Levy the Tax—In dealing with the subject of collateral inheritance it should be remembered that the right to inherit, or to take by will, and the right to devise and bequeath property are not natural and inalienable rights, nor are they guaranteed by the state or federal constitutions, but are entirely within the control of each state. United States v. Perkins, 163 U. S. 625; 16 Sup. Ct. 1073; 41 L. Ed. 287; Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 18 Sup. Ct. 594; 42 L. Ed. 1037.

Furthermore, since the matter of inheritance is a right acquired solely by virtue of law; in fact, it is a creature of the law, there is no valid reason to be brought forth denying a sovereign state authority from making any restriction it may see fit to place upon the right of succession. Hence, it has authority to discriminate between resident and non-resident aliens; between direct relatives of a decedent as children and grandchildren, and more distant relatives as cousins, etc., and levy a tax accordingly.

Property held to be exempt from the ordinary taxing jurisdiction of a state does not necessarily bar the state from levying its inheritance tax. "The foundation upon which such acts rest is different from that which exists where the assessment is levied upon property. The succession or inheritance tax is not a tax on property * * *." Knowlton v. Moore, 178 U. S. 41; Buck v. Beach, 206 U. S. 392; 27 Sup. Ct. Rep. 712; 51 L. Ed. 1106.

Review of the Decisions Under the First Section of the Original Act—In the original act the persons subject to the tax, the exceptions thereto, and the rate of the tax were all fixed by Sec. 1467 of the Code, 1897. *This section is now repealed* but prior to the time it was stricken from the statutes many important decisions were rendered by the supreme court interpreting it which are now of vast importance in getting at the true import of our present statutes.

Therefore Section 1467 of the Code is set forth at length and a few of the decisions under its provisions are here digested. The section provided:

"*All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not,* and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant or sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, *to any person* in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, *adopted child*, the lineal descendant of an adopted child of a decedent, or to or for charitable, educational or religious societies or institutions within this state, shall be subject to a tax of five per centum of its *value, above the sum of one thousand dollars, after the payment of all debts*, for the use of the state; and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate *from the death of the deeedent* until paid."

NOTE—(That part of the preceding section appearing in italics has been specifically defined or considered by the supreme court.)

One of the first cases that arose under this section was In Re Estate of McGhee v. State of Iowa, (1898) 105 Iowa 9; 74 N. W. 695, which held that the words "*to any person*," though used in the singular should be construed to include more than one when required to give the statute the effect it was intended to have; that the word "*value*" when taken in consideration with the terms "appraised value," "actual market value" and "value" without qualification, means the "*fair market value*" and not the assessed value for the purpose of ordinary taxation; "*above the sum of one thousand dollars, after the payment of all debts*" refers to the debts of the decedent and not to those of each legatee or heir.

The case of Herriott v. Bacon, (1900) 110 Iowa 342; 81 N. W. 701, held, that the words "*above the sum of one thousand dollars*" meant that all estates of less than one thousand dollars in value after payment of debts were to be exempted, but when the value of the estate exceeds one thousand dollars, *all* property passing to collateral heirs is subject to the tax.

The case of Gilbertson v. McAuley, (1902) 117 Iowa 522; 91 N. W. 788, adheres to the interpretation of the words "*above the sum of one thousand dollars*" given in the case of Herriott v. Bacon, *supra*. Reaffirmed in Morrow v. Durant, (1908) 140 Iowa 437; 118 N. W. 781.

The supreme court, in Re Weaver's Estate, (1900) 110 Iowa 328; 81 N. W. 603, held, that where a resident of Iowa died owning cattle in Missouri which he willed to collateral heirs that neither the cattle nor the proceeds derived from their sale was subject to the Iowa collateral inheritance tax under the provision that "*all property within the jurisdic-*

tion of this state," etc., should be liable for the tax. This was held to be the rule even though the executor sold the cattle and brought the proceeds into this state for distribution. This certainly would not be the present rule in view of Sec. 1481-a of the Supplement 1913, (page 10 hereof) which expressly provides that property brought into this state "for distribution" is subject to the tax.

At the same term of court (January, 1900) that the cases of Herriott v. Bacon, *supra*, and In Re Weaver's Estate, *supra*, were decided the case of Ferry v. Campbell, (1900) 110 Iowa 290; 81 N. W. 604; 50 L. R. A. 92, came on for hearing. The constitutionality of the collateral inheritance tax law was attacked on the ground that it deprived one of his property without due process of law, in that no notice of appraisement was provided for, or required to be given to the heirs, legatees or devisees of the time or place of appraisement. This contention was sustained by the trial court and the act declared to be unconstitutional. The case was then appealed but before it came on for hearing the 27 G. A., by the passage of Chap. 37, provided for notice of appraisement to be given to those interested and removed the objectional feature of the law. The supreme court then held that while the judgment of the lower court was correct in holding the law unconstitutional at the time the decree was rendered, yet that finding ought to be reversed and the law declared to be constitutional on account of the enactment of the amendment pending the appeal.

This decision further recognizes in *dictum* that it was possible for real estate to have become completely vested under the unconstitutional law in the heirs and to be free from the tax; but as to personal property yet in the hands of the court, the opinion was given that it would be still subject to the tax.

The *dictum* in Ferry v. Campbell, *supra*, soon proved to be a source of litigation for in Herriott v. Potter, (1902) 115 Iowa 648; 89 N. W. 91, the defendant successfully resisted the collection of the collateral inheritance tax on real estate where the owner died after the enactment of the original statute on collateral inheritance tax, (which was unconstitutional as pointed out in Ferry v. Campbell, *supra*,) but before the curative amendment passed by the 27 G. A. chap. 37. The court holding that real property descends and vests in the heirs at the time of the decedent's death, hence if there was no valid law requiring the payment of collateral inheritance tax, at the time of the death, it would pass free from the tax.

Again the supreme court in the case of Montgomery v. Gilbertson, (1907) 134 Iowa 291; 111 N. W. 964, followed the *dictum* in Ferry v. Campbell, *supra*, and held that personal property then in the control of the probate court was subject to the tax even though the decedent's death occurred prior to the time the 27 G. A. passed the curative amendment to the original collateral inheritance tax statute, thus making it constitutional.

CHAPTER II

PROPERTY AND PERSONS SUBJECT TO THE TAX—RATE OF TAX—ETC.

Property Subject to the Tax—Rate—When to be Paid—Lien—Who to Release Lien—Sec. 1481-a, Supplement, 1913, as amended by 35 G. A. chap. 120. The estates of all deceased persons, whether they be inhabitants of this state or not, and whether such estate consists of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, *within this state or is subject to,* or thereafter, for the purpose of distribution, is brought within this state and becomes subject to the jurisdiction of the courts of this state, or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state passing in fee from the decedent owner, which shall pass by will or by the statutes of inheritance of this or any other state or country, or by deed, grant, sale, gift, or transfer made in contemplation of the death of the donor, or made or *intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person,* or for any use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax of five (5) per centum; provided, however, that when property or any interest therein shall pass to heirs, devisees or other beneficiaries subject to the tax imposed by this act who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty (20) per centum of its true value except when such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten (10) per centum of the value of the property or interest so passing. Any person beneficially entitled to any property or interest therein because of any such gift, legacy, devise, annuity, transfer or inheritance, and all administrators, executors, referees and trustees, and any such grantee

under a conveyance, and any such donee under a gift, and any such legatee, annuitant, devisee, heir or beneficiary, shall be respectively liable for all such taxes to be paid by them respectively. The tax aforesaid shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the treasurer of state within eighteen (18) months thereafter, except when otherwise provided in this act, and shall be and remain a legal charge against and a lien upon such estate, and any and all of the property thereof from the death of the decedent owner until paid. (*) Real estate sold under order of court shall be released from the lien imposed by this act and the lien shall attach to the proceeds of such sale, provided, that prior to the approval of such sale there shall have been given by the person making such sale a good and sufficient bond conditioned to secure the payment of all tax secured by the lien so released. This provision shall not be construed to relieve from personal liability any person owing such tax or whose duty it is to collect any pay such tax to the treasurer of state.

Unknown heirs, or heirs whose addresses are unknown, are subject to the inheritance tax whether they be direct or collateral. See Sec. 1481-a42 of the Supplement, 1913, as set forth on page 41 hereof.

Definition of "Tangible Property" and "Intangible Property"—The statute of Iowa does not define tangible or intangible property, nor are there any decisions directly in point from the supreme court of this state, except Hoyt v. Keegan, Administrator, decided May 13th, 1918, (unreported at the time of making this compilation.) In New York, both species of property are defined by statute.

NEW YORK.

"The words 'tangible property' as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt."

"The words 'intangible property' as used in this article shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt." Sec. 243, Tax Law of the State of New York, 1917.

When "Property Within This State"—In General—Notes and Mortgages—Agency—An analysis of the various decisions on what constitutes "property within the state" discloses two theories. The first one is based on the maxim *Mobilia Personam Sequuntur* (movables follow

(*) The remainder of this section was added by the 35th G. A. chap. 120.

the person), and the second theory is that if a claimant must come within the jurisdiction of a state to enforce his right to possession or enjoyment, or to perfect his title, or interest, in property, regardless of the location of the property or of the evidence thereof, he has property within the state and subject to the taxing jurisdiction thereof.

To the first theory, the objection is raised that it allows the right to succession to a great deal of property to escape taxation. To the second theory, the objection is made that it results in double taxation; being subject to tax at the creditor's domicile, as well as at the debtor's domicile. But since there is no provision in the federal constitution preventing such taxation, it is the theory now being adopted in many states.

It should be noted that the Iowa court in one of its first opinions, Gilbertson v. Oliver, (1906) 129 Iowa 568; 4 L. R. A. (ns) 953; 105 N. W. 1002, adhered to the rule first announced. But this case has been in effect overruled by the decision in Hoyt v. Keegan, Administrator, (decided May 13th, 1918,) and the rule of Massachusetts and Minnesota adopted. This is in conformity with the modern trend of decisions.

In the case of Gilbertson v. Oliver, (1906) 129 Iowa 568; 4 L. R. A. (ns) 953; 105 N. W. 1002, the supreme court of this state held that certificates of deposit, notes and mortgages and other evidences of indebtedness due and owing from residents of this state which were owned and held by a non-resident at her domicile in New Hampshire were not subject to the collateral inheritance tax of this state. The court adhered to the view that the situs of personal property of the nature of notes and evidence of indebtedness was at the domicile of the creditor and not that of the debtor. It should be noted that the defendant paid a tax on succession to shares of stock in the Onawa Bank of this state without question. This case was decided in 1906 prior to the enactment of a broader statute on the same subject.

In re Estate of Culver, (1909), 145 Iowa 1; 123 N. W. 743, it was held shares of stock in the State Savings Bank of Council Bluffs owned by the decedent, Culver, who was a resident of Kansas was subject to the collateral inheritance tax of Iowa. The court distinguished this proposition from ownership of notes, etc., by a non-resident as pointed out in Gilbertson v. Oliver, *supra*, and held that shares of stock represent an interest in property; that since the corporation was organized under laws of Iowa, and was located and doing business within the state that it, and the property it possessed was "*within the jurisdiction of this state.*" Since the decedent had an interest, evidenced by shares of stock in said property, he had property *within this state* and that the right of succession thereto by collateral heirs was subject to the tax. This was announced as the rule even though the shares of stock were held by decedent at his domicile in Kansas. A tax was also levied on the right of succession to an ordinary bank deposit in this case.

Later on, the court somewhat broadened the scope of this statute in its opinion in Re Estate of Adams, (1914) 167 Iowa 382; 149 N. W. 531.

This case is one of the most interesting as well as one of the most important opinions to be found in Iowa on the question of collateral inheritance. Briefly the facts are these: Hannah H. Adams left a will disposing of her entire estate to collateral heirs and was at the time

of her death, and for many years prior thereto a resident of the state of Florida. Prior to removing to Florida she resided in Waukon in the state of Iowa, and one Hendrick acted as her agent at Waukon in negotiating and caring for many loans which had been made for her in that place. The notes and the mortgages were either in the possession of her agent, Hendrick, or were in the possession of an officer of The Waukon State Bank. Furthermore one of the officers of the bank had a power of attorney from Mrs. Adams, authorizing him to cancel and release any mortgages of record appearing in the name of Mrs. Adams. On the 3rd day of August, 1904, Hendrick received instructions to secure all of the notes and mortgages and to take them to Chicago where Mrs. Adams was, she having gone to Chicago for the purpose of receiving medical attention. On the 4th day of August, 1904, Mrs. Adams redelivered the notes and mortgages to Hendrick who returned home, stopping on his way at Prairie du Chien, Wisconsin, and depositing the notes and mortgages in a bank at that place for safe keeping. Prairie du Chien is just across the Mississippi River from Waukon, and is the nearest point by rail from the latter place. On the 6th day of August, 1904, Mrs. Adams died in Chicago. Her estate was administered upon in the state of Florida. The state of Iowa contended that the notes and mortgages which had been removed from Waukon were subject to the collateral inheritance tax of this state.

As a general rule personal property follows the person, and for the purpose of taxation is assessable at the domicile of the owner, but if the creditor establishes an agency in another state than that of his domicile such securities as are in the possession of the agent are "within the jurisdiction" of the foreign state for the purpose of taxation, this is the rule, although the securities may be temporarily withdrawn from the situs of the agency. In this particular case the supreme court said "there can be no doubt in our minds that this transaction was had to avoid our collateral inheritance tax laws, and that Hendrick still retained control over the securities and either received payments thereon or was authorized to do so until the revocation of his authority by the death of Mrs. Adams."

Continuing the opinion states: "The supreme court of the United States in the case of Bristol v. Washington County, 177 U. S. 133, 20 Sup. Ct. 585, 44 L. Ed. 701, approved the following: For many purposes the domicile of the owner is deemed the situs of his personal property. This, however, is only a fiction, from motives of convenience, and is not of universal application, but yields to the actual situs of the property when justice requires that it should. It is not allowed to be controlling in matters of taxation. Thus corporeal personal property is conceded to be taxable at the place where it is actually situated. A credit, which cannot be regarded as situated in a place merely because the debtor resides there, must usually be considered as having its situs where it is owned—at the domicile of the creditor. The creditor, however, may give it a business situs elsewwhere, as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business.' * * * 'Now, here was property within this state, not for a mere temporary purpose, but as

permanently as though the owner resided here. It was employed here as a business by one who exercised over it the same control and management as over his own property, except that he did it in the name of an absent principal. It was exclusively under the protection of the laws of this state."

Therefore since the possession of the notes and mortgages in Re Adams' Estate were in the constructive custody of Hendrick, even though at the time of the decedent's death actually situated outside of the state of Iowa, they were to be considered as being within this state and subject to the tax.

This case is supported by many citations from New York as well as from the Supreme Court of the United States.

By virtue of the decision in Hoyt v. Keegan, Administrator, (decided May 13th, 1918) the Iowa supreme court adopted the view expressed in the case of Blackstone v. Miller, *infra*, and therefore the rule followed in Massachusetts, Michigan and Minnesota is in effect the rule of this state. In the case of Blackstone v. Miller, 188 U. S. 189; 47 L. Ed. 439; 23 Sup. Ct. Rep. 277, the rule was announced that if the laws of the state are necessary, or may be invoked, to enforce the collection of the indebtedness, there is property "within the state" and subject to the taxing power of that state regardless of the domicile of the creditor, or the actual physical situs of the evidence of indebtedness.

MASSACHUSETTS.

This rule finds support in the case of Kinney v. Stevens, 207 Mass. 368; 93 N. E. 586; 34 L. R. A. (ns) 784, where certain promissory notes secured by mortgages upon real property within the state of Massachusetts were held to be subject to the tax of that state even though the notes were in the possession of the decedent at his domicile in New Hampshire. This case was decided in 1911.

The more recent case of Bliss v. Bliss, 221 Mass. 201; 109 N. E. 148; L. R. A. 1916A, 889, approves of the doctrine announced in Blackstone v. Miller, *supra*, and Kinney v. Stevens, *supra*, and holds that a registered bond of the commonwealth of Massachusetts owned by a non-resident and kept at his domicile is subject to the succession tax of that state. The court holding that the bond could not be collected by any process in the courts except by invoking the Massachusetts law; that in order to convey complete title to the bonds, it was necessary to comply with the laws of that state in the matter of registering the bond and that the same could be taxed in that state under the theory that it was property "within the state." This case was decided in 1915 and is in accord with the late decisions of many states on this subject.

See, also, Greves et al. v. Shaw, 173 Mass. 205; 53 N. E. 372.

MICHIGAN.

The state of Michigan, which has copied the statutes of New York in regard to the inheritance tax, has a line of authorities criticizing the case of Gilbertson v. Oliver, (1906) 129 Iowa 568; 4 L. R. A. (ns) 953; 105 N. W. 1002, and holding that notes secured by mortgages upon land within the state of Michigan, even though the notes are held at the

domicile of the owner in another state at the time of his death, are subject to the tax of the state of Michigan as being property "within the jurisdiction of this state." In Re Estate of Rogers, 149 Mich. 305; 112 N. W. 931; 11 L. R. A. (ns) 1134; Re Merriam, 147 Mich. 630; 9 L. R. A. (ns) 1104; 111 N. W. 196, decided in 1907.

In the case of Re Estate of Rogers, *supra*, the court said, "it is clear the mortgagee named in the mortgage could not preserve his lien on the real estate against creditors and subsequent purchasers without complying with the registry law of the state. If the debts secured by the mortgages are not paid, they cannot be collected without the aid of the laws of tne state. The estate of Mr. Rogers cannot be properly administered and closed without ancillary letters of administration obtained under the laws of this state."

Further the court states, "What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes. Yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other person to collect the debt? The law of the same place."

The Michigan courts recognize the maxim of *Mobilia Personam Sequuntur* (movables follow the person) but that "when logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way." Therefore, when there is personal property within the state, as the rights acquired by virtue of a mortgage, the state of Michigan assesses the tax regardless of the domicile of the owner. This is in conformity to the rule of Massachusetts. Re Estate of Rogers, *supra*.

See also Re Stanton's Estate, 142 Mich. 491; 105 N. W. 1122.

MINNESOTA.

In State v. Probate Court, 128 Minn. 371; 150 N. W. 1094, a tax on succession to bank stock, in both state and national banks, to stock in a lumber company, to a promissory note, and to book accounts was sustained, although the decedent owner was a resident of Pennsylvania.

NEBRASKA.

In Douglas County v. Kountze, 84 Neb. 501; 121 N. W. 593, a tax was levied on the right to succession of certain shares of stock in a Nebraska corporation even though the certificates were then in the hands of trustees in the state of New York.

NEW JERSEY.

See case of Dixon v. Russell, 73 Atl. 51.

NEW YORK.

There were three cases decided by the New York Court of Appeals on the 6th of October, 1896, which have been quoted from and followed in many states, Iowa being among the number.

The first one in Re Whiting's Estate, is reported in 150 N. Y. 27; 55 Am. St. Rep. 640; 44 N. E. 715; 34 L. R. A. 232. It appears from the facts stated in this opinion that Augustus Whiting, a resident of Newport, Rhode Island, died there in July, 1894, leaving a will by which he gave his entire estate in trust for his infant daughter. At the time of his death, he had money on deposit in a bank in New York, and was possessed of certain bonds and certificates of stock that were found in a rented safety deposit vault within the state of New York. The stocks and bonds were issued partly by corporations of New York and partly by foreign corporations, and there were also some $52,000 in bonds of the United States among the lot. The court held in this case that the bonds of the foreign corporations as well as the bonds and certificates of stock of the New York corporations, although owned by a non-resident, were "property within the state" and subject to the tax. The court further held that the bonds of the United States were exempt from the tax under the peculiar provisions of the New York statute.

The second case was that of in Re Houdayer, 150 N. Y. 37; 55 Am. St. Rep. 642; 44 N. E. 718; 34 L. R. A. 235. In this case it appears that John F. Houdayer died intestate at Trenton, New Jersey, where he resided for a number of years. In 1876, he opened an account with the Farmer's Loan and Trust Co., of the city of New York, as trustee under the will of one Husson, deceased, in which he from time to time deposited money belonging to the trust estate as well as money belonging to himself personally. At the death of Houdayer the state of New York sought to tax the balance on hand in the account amounting to some $73,000, of this amount, $2000 belonged to the trust estate and the remainder to Houdayer himself. The court held that the funds were subject to the inheritance tax of the state of New York, and in doing so stated, "While the relation of debtor and creditor technically existed practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this state, subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depositary was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt, conceding that it was intangible, still it was property in this state, for all practical purposes, and in every reasonable sense within the meaning of the transfer tax act. Re Romaine's Estate, 127 N. Y. 80, 89, 12 L. R. A. 401." The deposit was therefore held subject to taxation.

The third case was that of in Re Bronson's Estate, 150 N. Y. 1; 55 Am. St. Rep. 632; 44 N. E. 707; 34 L. R. A. 238. In this case, the decedent was domiciled in the state of Connecticut where he died in 1893, leaving by his will his residuary estate to his two sons, residents of Connecticut. A part of the residuary estate consisted of shares of capital stock and in the bonds of corporations organized under the laws of New York. The bonds and certificates of stock being in the testator's

possession at his domicile. The court held that the bonds were merely evidence of indebtedness and that the situs of the debt was at the creditor's domicile; and that the state of New York had no jurisdiction over these bonds. But as to the shares of stock, the court took a different view and held that "corporate shares must be regarded as property within the broad meaning of that term. Certificates of stock, in the hands of their holder, represent the number of shares which the corporation acknowledges that he is entitled to. * * * As personalty, the legal situs does follow the person of the owner; but the property is in his right to share in the net produce, and, eventually, in the net residum of the corporate assets, resulting from liquidation. That right as a chose in action must necessarily follow the shareholder's person; but that does not exclude the idea that property as to which the right relates, and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the state for the purpose of assessment upon its transfer through the operation of any law, or of the act of its owner. The attempt to tax a debt of the corporation to a non-resident of the state, as being property within the state, is one thing, and the imposition of a tax upon the transfer of any interest in or right to the corporate property itself is another thing. The corporation is the creature of the state laws, and those who become its members, as shareholders, are subject to the operation of those laws, with respect to any limitation upon their property rights and with respect to the right to assess their property interests for the purposes of taxation."

The Court of Appeals of New York, in the case of People ex Rel. Hatch v. Reardon, 184 N. Y. 431; 77 N. E. 970; 112 Am. St. Rep. 628; 6 Ann. Cas. 515; 8 L. R. A. (ns) 314, had occasion to consider, in relation to their transfer tax law, whether there was "property within the state" within the meaning of the New York statutes, where it appeared that two residents of Connecticut came to New York and there sold and assigned to each other certain shares of stock in corporations organized and existing under the laws of Virginia and Wisconsin. The shares of stock were in New York at the time of the purchase and sale but there was no property of the corporation within the state so far as it appears from the record. The court said, in part, "The fiction of the common law, *mobilia sequuntur personam*, has no foundation in the Constitution, and does not control the legislature, which rejects or adopts it at will as applied to the subject of taxation. When two citizens of Connecticut come into this state and make a contract here, to be enforced here, both they and their contract are subject to its laws; and they are not only entitled to the protection thereof, but are under the same obligation to obey as if they were citizens. Such a contract is valid or invalid as our laws declare." The court further approves of the doctrine of Kidd v. Alabama, 188 U. S. 730, 733; 47 L. ed. 669, 672; 23 Sup. Ct. Rep. 401, 402, wherein it was held that shares of stock may be within a state and the property of the corporation outside of it.

It should be noted that the foregoing case was decided in 1906 and that it shows a tendency to accept the rule of Massachusetts and Michigan in the matter of determining what is "property within the state."

Equitable Conversion—When Proceeds of Real Estate Brought Within State for Distribution Subject to Tax—The statute of Iowa expressly exempts from the collateral inheritance tax "real estate located outside of the state passing in fee direct from the decedent owner." However, it also provides that all property brought within the state "for purpose of distribution" shall be taxed. It has never been determined by our supreme court whether proceeds derived from the sale of real estate lying without the state is subject to the tax when brought within this state for distribution. The Treasurer of State has adopted the rule that unless the real estate passes "*in fee direct from the decedent owner*," the property, as well as the proceeds, is subject to the tax.

There is no case directly in point in Iowa, but in the case Re Weaver's Estate, (1900) 110 Iowa 328; 81 N. W. 603, the proceeds derived from the sale of cattle sold in Missouri (the cattle being then exempt from the tax) were treated as exempt when brought within this state for distribution. This decision was rendered prior to the time of inserting the clause in the statute that when property is "brought within the state" for the "purpose of distribution" it should become subject to the tax.

Should a testator residing in this state specifically devise real property located in another state to a beneficiary, there is clearly an exemption in favor of such legatee, but where the testator orders his executors to sell the land and distribute the proceeds, a question is raised which is not easily solved. In such cases the court will be obliged to consider what is known as "equitable conversion."

This term has been defined as "a change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such." Haward v. Peavey, 128 Ill. 430; 21 N. E. 503; 15 Am. St. Rep. 120; Pomeroy Eq. Jur. Sec. 1159; 9 Cyc. 824. It has also been held "an equitable conversion arises where owing to the binding directions of a will it becomes proper and legal for a court to treat real estate as having been converted into personal property although there has been no actual exchange." In Re McKay, 75 N. Y. App. Div. 78; 77 N. Y. Supp. 845. The basis of this doctrine is that equity will regard "things directed or agreed to be done as actually performed." 9 Cyc. 825.

This rule has been adhered to in Iowa a number of times, but not in cases relating to collateral inheritance. Among the Iowa cases see, Re Estate of Bernhard, (1907) 134 Iowa 603; 112 N. W. 86; 12 L. R. A. (ns) 1029, where it is said "where a testator in his will directs a sale of real estate, the property is thereby converted from realty to personalty, and, whenever the sale takes place the proceeds arising therefrom are to be distributed as personalty."

As a general rule the necessity of conversion of realty into personalty to accomplish the express provisions of a will is equivalent to an express direction to convert the property and is in effect an equitable conversion. This finds abundant support in the opinions of many states. See 9 Cyc. 833. If, however, the act of converting is left to the option or discretion of the beneficiaries or trustees, it has been held no conversion is effected. Also that where there is a mere naked power to

sell, the property retains its original status until the power of sale is exercised. Haward v. Peavey, 128 Ill. 430; 21 N. E. 503; 15 Am. St. Rep. 120. Such has been the holding when the executors were given power to sell land for the payment of debts. Re Fox, 52 N. Y. 530; 11 Am. Rep. 751.

This feature of the Iowa collateral inheritance tax is entirely too broad to be treated upon in a work of this character, hence nothing more than general principles is here given.

ILLINOIS.

The statute of Illinois, in 1904, was in all material respects the same as that of New York on inheritance taxes, and the court followed the rule announced in *Re Swift, infra*, by the New York court, and held the doctrine of equitable conversion is recognized in equity only, and is not given effect in courts of law; and that it could not be applied so as to subject real property situated in foreign states or the proceeds thereof, to the succession tax of Illinois. Connell v. Crosby, (1904) 210 Ill. 380; 71 N. E. 350.

MICHIGAN.

While the case of Re Stanton's Estate, 142 Mich. 491; 105 N. W. 1122, does not discuss "equitable conversion" yet it holds where an owner has sold land under contract, the legal title to remain in vendor until the purchase price is paid, that the right of succession to the vendor's interest at her death is subject to the inheritance tax even though succession to "real estate" is exempt therefrom.

NEW YORK.

In the case of Re Swift's Estate, 137 N. Y. 77; 50 N. Y. S. R. 91; 32 N. E. 1096; 18 L. R. A. 709, the decedent, Swift, died a resident of New York, leaving a will by which he disposed of all his property among his relatives. After many legacies he directed a division of his residuary estate into four portions and bequeathed one portion to each of four persons therein named. The executors were *given a power of sale* for the purpose of paying legacies and of making the distribution of the estate. At the time of his death he owned both real and personal property situated in the state of New Jersey. The court held the personal property was subject to the tax of New York but that the real estate was exempt, and that the doctrine of "equitable conversion is not applicable to subject it to taxation." It should be noted that in this case only a "power of sale" was given and not a direct and positive order to sell, nor was it shown to be necessary that a sale be made to effectually distribute the residuary estate.

Relying upon the case of Re Swift, *supra*, the surrogate's court of New York has gone a step further and held that the proceeds derived from the sale of land in Nebraska, under a contract of sale made by decedent in New York shortly before her death, was to be treated as realty and exempt. The court in this case states that the doctrine of equitable conversion cannot be invoked by a state for purposes of taxation. Re Baker, 67 Misc. 362; 124 N. Y. Sup. 827.

NORTH CAROLINA.

Where a testator directs his executors to sell certain real property and divide the proceeds, it has been held in North Carolina that such conversion is for the purpose of distribution only and does not change the character of the property in respect to its liability for debts or legacies. Baptist Female University v. Borden, (1903) 132 N. C. 476; 44 S. E. 47.

PENNSYLVANIA.

It has been repeatedly held in this state that where a testator has made a "positive and peremptory order to his executors to sell all of the real estate" that it cannot be questioned but that a conversion has been made of the real estate into personalty efficacious from the moment of the testator's death. Hence, the proceeds derived from the sale of real estate, regardless of its actual situs is subject to the inheritance tax. Miller v. Commonwealth, (1885) 111 Pa. 321.

The same rule was followed in Williamson's Estate, (1893) 153 Pa. 508, wherein it is said: "the lands of the testator lying in other states which he directed his executors to sell, and the proceeds from which he gave to persons and objects in this state, are converted by the direction to sell. The fund being distributable here is subject to the collateral inheritance tax under the rule stated in Miller v. Commonwealth," *supra.*

While a peremptory order to sell converts the real estate to personalty yet if the order to sell postpones the date of sale twenty years it has been held that no conversion was effected and that the tax could not be collected in such a case. Re Handley, (1897) 181 Pa. 345; 40 W. N. C. 306; 37 Atl. 587.

"Where, therefore, the conversion is not imperative, but only permissive and rests in the discretion of the executors or others, it does not become operative until the exercise of the discretion, and in the meantime the land retains its normal character." Miller v. Commonwealth, *supra.*

In Re Vanuxem, 212 Pa. St. 315; 61 Atl. 876; 1 L. R. A. (ns) 400, it was held that the value of real estate lying in other states, which it was necessary to sell under authority vested in the executors in order to pay pecuniary legacies, that such legacies were subject to the collateral inheritance tax at the testator's domicile.

The supreme court of Pennsylvania in the case of Re Shoenberger, 221 Pa. 112; 70 Atl. 579; 19 L. R. A. (ns) 290, held that where a testator, a resident of New York, died leaving a will directing his executors to convert into money real property situated in the state of Pennsylvania that the same should be treated by the courts of Pennsylvania as personal property which was at the testator's domicile and exempt from the tax of Pennsylvania.

Equitable Conversion—Partnership Property as Personalty—The theory of equitable conversion has long been considered in connection with partnership property. That real estate belonging to a partnership is to be treated as personal property, has been recognized in Iowa for many years. In the early case of Hewitt v. Rankin, (1875) 41 Iowa 39,

the supreme court stated: "We think the weight of authorities is to this effect: Real estate held by a partnership is to be regarded as the property of the firm, as to creditors and all other persons dealing with it, where necessary to protect their rights. The partner is to be regarded in such cases as holding only an interest in the stock or capital of the partnership, which is *personal property.* If the business of the firm be in operation or there be liabilities outstanding against it, the partners have not an interest in its lands, or other assets that may be regarded as property; their interest is in the stock of the firm, whatever upon final settlement may be due them."

Continuing, the court says: "The conversion of real property into personalty under the rule first above stated, is a device of equity in order to effectuate the settlement of partnerships, and to devote all their property to the payment of the firm debts, a result highly equitable, which the courts will never fail to attain. The reason of the rule ceasing in the absence of creditors of the firm or others having like equities, the rule itself should no longer be applied." This case has been repeatedly affirmed, Vol. 4, of Iowa Notes, page 470.

In a more recent case, the supreme court said: "It is the general rule, which has been frequently approved by this court, that in equity real property owned by a partnership will be treated as personalty, *subject to the rules which govern that species of property.*" See the case of Western Securities Co. v. Atlee, (1915) 168 Iowa 650, page 665; 151 N. W. 56.

That partnership property, lying within this state, whether real or personal, is subject to the tax cannot be questioned. But the supreme court of this state has never had occasion to consider the question of whether real property lying without the state, and owned by a partnership, should be treated as personal property or real property for the purpose of collateral inheritance taxation.

IN GENERAL.

As to the application of the theory of equitable conversion to partnership property in general, see the Annotations to Robinson Bank v. Miller, 27 L. R. A. 449; and Johnson v. Hogan, 37 L. R. A. (ns) 889.

NEW YORK.

"Although the question has not been litigated, the New York state comptroller has given an opinion that, under this doctrine, that real estate owned by a partnership though situated outside the state is to be included in the valuation of the assets of the firm in which a decedent had an interest." Gleason and Otis on "Inheritance Taxation," page 261, Matter of Dusenberry, 2 N. Y. State Dept. Rep. 501. It is therefore clear that New York regards partnership real property, even though lying without the state, as personalty and subject to the tax.

ENGLISH RULE.

In the case of Commissioner of Stamp Duties v. Salting, (1907) 76 L. J. P. C. N. S. 87; 97 L. T. N. S. 225; 23 Times L. R. 723; 3 British Ruling Cases 786, it was held that the interest of W. S. Salting, deceased, in a sheep farming station and property in New South Wales owned and oper-

ated by a partnership was subject to the stamp duty in New South Wales where the property was located, and not according to the law of England where the decedent resided during his lifetime.

But under an earlier case, (1870) it was held that a legacy duty was payable upon the share of a deceased partner domiciled in England in the proceeds of real estate situated in Bombay belonging to the partnership, the business of which was carried on at the latter place. Forbes v. Steven, L. R. 10 Eq. 178; 39 L. J. Ch. N. S. 485; 22 L. T. N. S. 703; 18 Week. Rep. 686.

"And in Laidlay v. Lord Advocate (1890) 15 App. Cas. 468, it was held that the interest of a deceased partner in a concern organized to do business in India, and whose business was entirely carried on there under the management of agents who were partners, was not property situated in England, and was not liable for the probate duty there, although all but two of the sixteen partners resided in England and the business was carried on under their advice, and a firm in the latter country was named as a financial agent of the concern." See Note to Commissioner of Stamp Duties v. Salting, 3 British Ruling Cases, 793.

Corporate Stock as "Property Within the State"—The state has a right to tax succession to shares of corporate stock of a corporation located within the state and existing by virtue of its laws, even though the owner of the stock be a non-resident. Re Culver, (1909) 145 Iowa 1; 123 N. W. 743; 25 L. R. A. (ns) 384 where succession to bank stock was held subject to tax.

MARYLAND.

State v. Dalrymple, 70 Md. 294; 17 Atl. 82; 3 L. R. A. 372.

MASSACHUSETTS.

Greves v. Shaw, 173 Mass. 205; 53 N. E. 372; Moody v. Shaw, 173 Mass. 375; 53 N. E. 891; Kingsbury v. Chapin, 196 Mass. 533; 82 N. E. 700; 13 Ann. Cas. 738.

MICHIGAN.

In Re Stanton's Estate, 142 Mich. 491; 105 N. W. 1122.

MINNESOTA.

State v. Probate Court, 128 Minn. 371; 150 N. W. 1094, a case exceedingly well stated and containing many citations where stock in both State and National banks belonging to a non-resident were taxed as were shares of stock in a lumber company, notes, and book accounts.

NEW YORK.

Matter of Whiting, 150 N. Y. 27; 44 N. E. 715; 34 L. R. A. 232; 55 Am. St. Rep. 640, where tax was assessed on transfer of shares of domestic corporation as well as shares of foreign corporation when shares of stock were on deposit within state at time of owner's death at his residence in Rhode Island.

Debts Due from Residents of Iowa to Non-Residents—In the case of Gilbertson v. Oliver, (1906) 129 Iowa 568; 105 N. W. 1002, under a former statute the Iowa supreme court held that debts due from a resi-

dent of this state to a resident of New Hampshire were not subject to the inheritance tax of this state. The court adopted the theory that the situs of the debt was at the domicile of the creditor and not that of the debtor. Likewise, the rule was applied to notes and to certificates of deposit. This view is not in harmony with that expressed in opinions of many of the states of the union. But see the recent opinion in the case of Hoyt v. Keegan, Administrator, (decided May 13th, 1918) wherein our present statute has been so construed as to bring it within the modern trend of cases, and where certificates of deposit owned by a non-resident were taxed.

MARYLAND.

State of Maryland v. Dalrymple, 70 Md. 294; 17 Atl. 82; 3 L. R. A. 372 is *contra* to Gilbertson v. Oliver, *supra*.

MINNESOTA.

In the case of State v. Probate Court of St. Louis County, 128 Minn. 371; 150 N. W. 1094, the tax was levied upon a book account of over $80,000.00 and also upon a note for over $13,000.00, due from residents of Minnesota to a resident of Pennsylvania.

NEW YORK.

In the case of Re Daly's Estate, the decedent was a resident of Montana and at the time of his death there was due him from a creditor in New York some $263,000.00 on open account. His secretary had also deposited to his credit in a special account over two million dollars, without the knowledge of Daly. A tax was sustained on both the open account and the special deposit. 100 App. Div. 373; 91 Supp. 858; 182 N. Y. 524; 74 N. E. 1116.

Bank Deposits as "Property Within the State"—The right to levy a tax on the succession to an ordinary bank deposit in this state belonging to a resident of Kansas was recognized in Re Estate of Culver, (1909) 145 Iowa 1; 123 N. W. 743; 25 L. R. A. (ns) 384. There is *dictum* in this case that should the deposit be evidenced by a certificate of deposit and be in the possession of a non-resident at his domicile that the deposit would not be subject to the tax.

On a second appeal of this case (153 Iowa 461, 133 NW. 722) and on the third appeal (159 Iowa 679; 140 NW. 878) there is *dictum* that an ordinary bank deposit made by a non-resident is not taxable. But all this *dictum* has been overruled in the case of Hoyt v. Keegan, Administrator, (decided May 13th, 1918) wherein a savings account evidenced by a pass book and a certificate of deposit were both held to be taxable, the depositor being a resident of Illinois and the passbook and certificate being issued by a bank of this state.

In the case of Gilbertson v. Oliver, (1906) 129 Iowa 568; 105 N. W. 1002; 4 L. R. A. (ns) 953, it was held that a deposit in a bank of this state evidenced by a certificate of deposit and held by the non-resident owner at her residence in New Hampshire at the time of her death was not subject to the inheritance tax of Iowa, there being no property within this state.

For the law relating to joint deposits and joint ownership of property, see page 25 hereof.

IN GENERAL.

There is also abundant authority for the proposition that there is no provision in the federal constitution prohibiting the state in which the deposits are made from levying a tax on the right of succession to the deposits, even though the state of which the depositor is a resident may also levy a tax. One of the leading authorities on this proposition is Blackstone v. Miller, 188 U. S. 203; 23 Sup. Ct. 277; 47 L. Ed. 439. In this case the decedent was a resident of Chicago and the deposits were in the charge of a trust company in the city of New York. The deposits amounted to between four and five million dollars, being the proceeds derived from the sale of a railroad. The state of New York was held to be entitled to levy a tax on the right of succession to these funds even though the state of Illinois would also levy a tax.

That ordinary bank deposits are subject to taxation at their actual situs is so well established that the question is now seldom raised. That the state in which an owner is domiciled may levy the tax on the right to succession to deposits in banks in foreign states finds support in many cases. It has been so held even though the deposits have been directly administered upon and distributed in such foreign states. The following are authorities on this proposition. Re Hodges .... Calif. ....; 150 Pac. 344; L. R. A. 1916A, 837; People v. Union Trust Company, 255 Ill. 168; L. R. A. 1915D, 450; 99 N. E. 377; Ann. Cas. 1913D, 514; Mann v. Carter, 74 N. H. 345; 15 L. R. A. (ns) 150; 68 Atl. 131; Frothingham v. Shaw, 175 Mass. 59; 78 Am. St. Rep. 475; 55 N. E. 623.

See the note to the case of Re Helena, 46 L. R. A. (ns) 1167, which fully covers this matter.

MICHIGAN.

See in Re Stanton's Estate, 142 Mich. 491; 105 N. W. 1122, where tax was levied even though depositor was resident of New York.

NEW HAMPSHIRE.

There is a well-reasoned line of authorities in the state of New Hampshire holding that in many respects the rights of a depositor in a bank are analogous to those of a stockholder of a business corporation; and that the depositing of money in another state, by a resident of New Hampshire, does not remove the deposits beyond the taxing power of the state of New Hampshire, even though the funds be physically within another state, since the deposits are within the constructive possession of the decedent at the place of his domicile. Furthermore, that while the state of Massachusetts in the exercise of its taxing power might levy a tax on the right of succession to the deposits, yet such fact would not prevent the state of New Hampshire from levying its succession tax on the same identical property. Mann v. Carter, 74 N. H. 345; 68 Atl. 130; 15 L. R. A. (ns) 150.

NEW YORK.

In Re Houdayer, 150 N. Y. 37; 55 Am. St. Rep. 642; 44 N. E. 718; 34 L. R. A. 235, deposits in New York were taxed although decedent was a resident of New Jersey.

Deposits are taxed in New York even though depositor holds a certificate of deposit at his non-resident domicile. Gleason and Otis on "Inheritance Taxation," page 257. Citing Matter of Hewitt, 90 Supp. 1100; affirmed in 181 N. Y. 547.

See also in Re Daly's Estate, 100 App. Div. 373; 91 Supp. 858; 182 N. Y. 524; 74 N. E. 1116. This case involves an unusual state of facts. During the life-time of Daly, he loaned considerable money to Wm. G. Rockefeller, a resident of New York. Daly was a resident of Montana. He came to New York on business and was taken seriously ill. Rockefeller gave to Daly's secretary a check for some two million dollars in payment of a loan. The secretary deposited this money in a special account for Daly in one of the banks of New York, all of which was without any knowledge on the part of Daly. Shortly thereafter, Daly died, and the state of New York was held to be entitled to levy its tax upon the deposit.

Government Bonds—Liberty Loan Bonds—Bonds of the United States and bonds of any State or sub-division are subject to the inheritance tax of the state or of the United States regardless of the fact that such bonds may be exempt from ordinary taxation. The inheritance tax is not a tax on the property but on the right of succession to the property. There is abundant authority for the taxing of succession to government bonds as will be discovered by a review of the following cases.

LOUISIANA.

Succession of Levy, (1905) 115 La. 378; 39 So. 37, affirmed by the Supreme Court of the United States, (1906) 203 U. S. 543; 27 Sup. Ct. Rep. 174; 51 L. Ed. 310.

NEW YORK.

Matter of Sherman, 153 N. Y. 1; 46 N. E. 1032, holding bonds of the United States to be taxable but by reason of a peculiar statute then in force in New York they were not to be included in assets of the estate for inheritance tax purposes.

See also the case of People ex rel. U. S. A. P. P. Co. v. Knight, (1903) 174 N. Y. 475; 67 N. E. 65.

UNITED STATES.

Plummer v. Coler, (1900) 178 U. S. 115; 20 Sup. Ct. Rep. 829, where it was held proper to tax the succession to United States bonds. Wallace v. Myers, (1889) 38 Fed. 184. Murdock v. Ward, (1900) 178 U. S. 139; 20 Sup. Ct. Rep. 775; 44 L. Ed. 1009.

Joint Ownership of Property—Rule as to Taxation of—Under this head joint tenancies, tenancies in common, and joint ownership of property is considered. The courts have no uniform rule in determining whether a tax shall be levied in such cases. So far as Iowa is concerned, our court has never passed upon this matter from a standpoint of collateral inheritance taxation, however, there are two cases which consider the matter and may serve as an aid in reaching what may be found the correct view.

In the matter of Brown's Estate, (1901) 113 Iowa 351; 85 N. W. 617, John Brown, the decedent, prior to his death, had certificates of deposit

amounting to some $1600.00 made out to himself and his wife, Mary Brown. At the time these certificates were made out, the intent was to so deposit the funds that in case of the death of one of the parties that the other might obtain the money upon surrender of the certificates of deposit. The certificates in this case were placed in the wife's keeping, but apparently not for the purpose of transferring absolute and unqualified title to her. Under the evidence, the court held that the deceased and his wife were joint owners of these certificates at the time of his death, and that the wife was entitled as survivor to only one-half of the fund and that the other half should be distributed as part of the estate of the husband.

In the case of Knutson v. Vidders, (1897) 126 Iowa 511; 102 N. W. 433, it appears that Hellick Quinsland and his wife, Serene, executed a will jointly. Part of the will stated, "We, Hellick Quinsland and Serene Quinsland, his wife, hereby make known our last will," etc., and the instrument was signed by both the husband and the wife. The will in part provided, "I hereby transfer to my wife, Serene Quinsland, the right and authority over our joint property whatever it may be, real or personal, in case she should outlive me, to live on undivided property until her death, the property that is left to be divided equally between our lawful heirs on both sides." It was held in this case by the lower court that the widow, Serene Quinsland, was the owner in fee of an undivided one half interest in the property of her deceased husband, and that his heirs were the owners of the other undivided one half. This was the holding regardless of the fact that Hellick Quinsland was the owner in fee of the real property transferred by this will.

It may therefore be deducted that the theory of survivorship does not obtain in this state so as to clothe the survivor of property owned in common with full and unqualified ownership at the death of the other tenant, or owners in common. It appears, however, that where there are two joint owners, that the survivor is entitled to an undivided one-half of the property. In the event of the death of one joint depositor the survivor is entitled to receive the entire fund. This is by virtue of an affirmative statute. Sec. 1889-b, Supplement, 1913. It is a query whether the survivor takes the deposit free from the inheritance tax in such cases.

The reasoning given by the supreme court of Maine in the case cited under this heading appeals to one as founded in logic and justice.

MAINE.

In a recent case reported from Maine it appears that residents of that state made a joint deposit in a bank in Rhode Island. It was held by the court that the law of the state where the deposit was made determined whether the doctrine of survivorship applied. Since such a rule would not be recognized by Rhode Island, under the facts of this case, the deposit was taxed in Maine on passing to the survivor. The court further held that such a deposit was not a gift *inter vivos* as it was not absolute and unqualified since the donor retained the right to use the funds at her pleasure during her life time; and that it was invalid as a gift if it was intended that the survivor should take full title and ownership in the deposit in case of the death of one of the joint depositors

since this would be attempting testamentary disposition of property which can be accomplished only by means of a will. Barstow et al. v. Tetlow et al., 115 Me. 96. The reasoning in this case is convincing.

MASSACHUSETTS.

The theory of survivorship is recognized in Massachusetts and no tax is to be applied on the succession by one of the parties to real property held by two persons jointly at the death of one of the joint owners. This holding was reached after considering the Massachusetts statute which imposes a tax on real property which passes by the "laws regulating intestate succession". Palmer v. Treasurer and Receiver General, 222 Mass. 263; 110 NE. 283; L. R. A. 1916C, 677. The same rule was applied to a joint tenancy in a bank account and it was thus held exempt from the tax. Attorney General ex rel. Treasurer and Receiver General v. Clark, 222 Mass. 291; 110 NE. 299; L. R. A. 1916C, 679. In both of these cases it was held that succession to the property was not obtained by virtue of laws regulating descent of property, nor by virtue of relationship, but solely on the ground of being the surviving joint tenant.

NEVADA.

The rule in this state is that the interest of a wife in community property is acquired by marriage and not by the laws relating to succession or inheritance, but that the interest is vested in the wife at all times during the marriage and therefore was not subject to the inheritance tax at the death of the husband. Re Estate of Williams, — Nev. —; 161 Pac. 741; L. R. A. 1917C, 602.

NEW YORK.

This state had a great deal of trouble with this question and finally enacted a statute thoroughly covering the subject and preventing evasion of the tax through joint ownership. The statute is as follows: "Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will." Subdivision 7, sec. 220 of Tax Law of State of New York, 1917.

In interpreting this section in the case of Re McKelway, (1917) 221 N. Y. 15; 116 NE. 348; L. R. A. 1917E, 1143, where it appears that the decedent and his wife jointly owned certain securities consisting of

corporate bonds, which they delivered to the Brooklyn Trust Company to hold in trust, and to pay the income in equal shares, to the owners, and should the agreement be in force at the death of either, to deliver and pay over the securities and any interest thereon on hand to the survivor, the court held that the wife was entitled to one-half of this property in her own right and that on succession to the remaining property she would be obliged to pay the transfer tax of that state.

It ought to be further stated that this kind of ownership is "an object of disfavor" in New York. Overheiser v. Lackey, 207 N. Y. 229, 233; 100 NE. 739; Ann. Cas. 1914C, 229.

Ancilliary Administration in Foreign State—Does Not Effect Right to Levy Tax at the Testator's Domicile—There is authority for the proposition that a state may impose its inheritance tax upon personal property of one who dies within its boundaries, although the property is located in another state, where it is distributed under ancillary administration according to the law of the state of domicile, and never comes within the jurisdiction of the latter state.

CALIFORNIA.

In the case of Re Hodges, — Calif. —; 150 Pac. 344; L. R. A. 1916A, 837, the rule was recognized where a resident of California died leaving certain stocks and bonds, deposits in bank, and certain other chattels, at the time of his death, all of which were located within the state of Massachusetts, and which were directly administered upon and distributed from the ancillary administration in that state.

ILLINOIS.

Thus, in the case of People v. Union Trust Company, 255 Ill. 168; L. R. A. 1915D, 450; 99 NE. 377; Ann. Cas. 1913D, 514, it was held that a decedent who died having as his domicile, Chicago, Illinois, but who left certain stocks and bonds in a deposit box in Los Angeles, California, which were administered upon and distributed through ancillary administration in California, yet it was held by the supreme court of Illinois that the inheritance tax of that state should be levied on the entire property of the decedent including the personal property which had been administered upon and distributed by the ancillary administrator in California.

NEW YORK.

Also in the case of Re Dingman, 66 App. Div. 228; 72 N. Y. Sup. 694, where the decedent was domiciled at the time of his death in the state of New York, and left personal property in the state of Iowa, it was held that the transfer tax of New York could be imposed on this personal property in Iowa though it was never brought into the state of New York but was distributed directly by the courts in Iowa.

Meaning of "In Contemplation of Death"—There are no Iowa cases dealing squarely with this subject to be found under the heading of the collateral inheritance tax. Whether a gift is made in contemplation of death is a question of fact. In Re Estate of Benton, 234 Ill. 366; 84

NE. 1026; 18 L. R. A. (ns) 458. Thus, under the foregoing decision a gift of personal property by an old man suffering from an incurable disease to avoid its falling into the hands of one who otherwise might obtain it, in case of the donor's death, is a gift "*in contemplation of death*" within the meaning of the statute taxing such gifts.

Whether a gift has been made in contemplation of death is not to be determined for the purposes of inheritance tax on the ground distinguishing gifts *causa mortis* from gifts *inter vivos*, for the courts have apparently adhered to the doctrine that a gift made *in extremis* is to be characterized as a gift *causa mortis* and thus subject to the tax; and also to hold that a gift, even if *inter vivos*, is subject to the tax if made with intent and for the purpose of evading the provisions of the inheritance tax law.

See case note to in Re Benton, 18 L. R. A. (ns) 458, for a digest of cases upon this subject.

There is *dictum* in the case of Lewis v. Brown, —— Iowa ——; 166 NW. 99, that a transfer of property made for a valuable consideration in the form of a reasonable annuity to the grantor for life is not a "transfer in contemplation of death" within the meaning of the statute. However, the point has not been directly passed on by our court.

CALIFORNIA.

In the case of Spreckles v. State, 30 Cal. App. 363; 158 Pac. 549, it was held under the evidence that the formation of a corporation by the widow of Spreckles, the "Sugar King", after she had passed her seventy-ninth birthday and while suffering from chronic heart trouble and thereafter making gifts of shares of stock to her children were not made "in contemplation of death", even though she died shortly thereafter. The court concedes this case was a "close one" and it intimates it would have been possible for the lower court to have found otherwise. An author in speaking of this case states that "under the court's theory nothing short of proving that the deceased made the transfer on her death bed would make the gift of all her property one in contemplation of death."

ILLINOIS.

In the case of People v. Burkhalter, 247 Illinois 600, 604; 139 Am. St. Rep. 351; 93 NE. 379, the supreme court of Illinois held that in order to subject a gift to the inheritance tax it was necessary to show that the impelling motive for making the gift was the fact that the donor made it "in contemplation of death."

In the case of Rosenthal v. People, 211 Ill. 306; 71 NE. 1121, the decedent, Oscar Rosenthal made a gift of some $150,000.00 in personal property to his wife on July 28, 1902, and on July 31, 1902 made a will disposing of all his property. He died September 1, 1902, of the disease he was suffering from at the time of making the gift and executing the will. The court held that the making of the gift and will, under the circumstances was "strong evidence that death was expected." The gift was held subject to the inheritance tax.

NEW YORK.

In Re Metts, 172 App. Div. 530; 158 Supp. 1100; 219 N. Y. 100, a gift of two million dollars by a donor 84 years of age, who at the time of the gift was in failing health, unable to write, and barely able to sign his name, was held to be exempt from the tax even though the donor died within ten days thereafter.

Mr. Gleason, attorney for the state comptroller for New York City, in his work on "Inheritance Taxation" page 82, speaking of the foregoing opinion says, "This rule has proved so unsatisfactory that Surrogate Cohalan * * * has promulgated another doctrine which will go far to solving a problem that has provoked drastic legislation of doubtful constitutionality. In Matter of Dunne, N. Y. Law Journal, May 25, 1914, he stated the doctrine as follows:

"When a person reaches the age of 80 years and makes a gift of a substantial part of his property, the presumption is that the gift is made because the donor realizes that in the ordinary course of nature he cannot survive much longer and wishes to anticipate the effect of a will or intestate laws by giving his property to those persons who would be legatees under a will or beneficiaries under the intestate laws * * * " and therefore should be taxed.

In the case of Re Baker, 83 App. Div. 530; 82 N. Y. Sup. 390, affirmed in 178 N. Y. 575; 70 NE. 1094, it is said: "This court has held that the words 'in contemplation of death', do not refer to that general expectation which every mortal entertains, but rather the apprehension which arises from some existing condition of body or some impending peril."

WISCONSIN.

The supreme court of Wisconsin has given considerable thought to the matter of gifts made "in contemplation of death." In the case of Re Dessert, 154 Wis. 320; 142 NW. 647; 46 L. R. A. (ns) 970, the supreme court approved of the definition previously given in the case of State v. Pabst, 139 Wis. 561; 121 NW. 351, where it was said that the words "in contemplation of death" as used in the statute of that state were "not used as referring to that expectation of death generally entertained by every person. * * * The words are evidently intended to refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it on those whom they regard as entitled to their bounty. In further explanation of the phrase, it is said: A gift is made in contemplation of that event when it is made in expectation of that event and having it in view, and a gift made when the donor is looking forward to his death as impending and in view of that event, is within the language of the statute." Thus where a man makes a substantial gift of property to his children if he is in sound mind and body, does not make it a gift made "in contemplation of death" even though he may be eighty-six years of age at the time of the gift.

The supreme court of Wisconsin does not consider old age in itself sufficient to vitiate a gift and bring it within the provision of the inheritance tax statutes.

Taxation of Transfer of Shares of Stock in Corporations Which are Incorporated and Doing Business in Several States—Our supreme court has never had occasion to consider this matter but the Treasurer of State has adopted the rule to tax such shares of stock at their full value regardless of the fact that the legatee or heir may be obliged to pay a tax on the same shares of stock in another state where the corporation is incorporated.

The rule of Massachusetts and New York is *contra* to that followed in Iowa. The annctation from Idaho presents a question seemingly not considered elsewhere.

IDAHO.

The case of State v. Dunlap, (1916) 28 Idaho 784; 156 Pac. 1141, presents an interesting feature of the inheritance taxation. The salient facts were that the Oregon Short Line Railroad was a corporation organized and existing by virtue of the laws of Utah. It had about 500 miles of railroad in Idaho together with considerable real property, totaling in value many million of dollars. The entire capital stock of this railroad was owned, absolutely, by the Union Pacific Railroad Company, a foreign corporation having no property in Idaho, except such interest as it possessed by virtue of ownership of the total capital stock of the Oregon Short Line. One of the principal stock holders in the Union Pacific was the late E. H. Harriman, a resident of New York, who by his will disposed of his interest in the Union Pacific to his wife. Harriman's estate held both common and preferred stock of the Union Pacific. The state of Idaho sought to have the Oregon Short Line appraised and an inheritance tax levied on the interest passing to Mrs. Harriman.

It was held that E. H. Harriman had no property within the state of Idaho at his death. His interest was in the Union Pacific Railroad and not in the Oregon Short Line. Among the reasons given for such a holding the court stated that it was not necessary for those interested in the Harriman Estate to ask permission or invoke the aid of the laws of Idaho to effectually transfer the stock passing to Mrs. Harriman. This certainly was true for Harriman was a "stranger" to the Short Line. All it was obliged to consider was its own stockholders, namely, the Union Pacific. That the Union Pacific was not obliged to ask permission from the state of Idaho to transfer its stock to Mrs. Harriman is apparent. However there is a vigorous dissenting opinion in this case by Chief Justice Sullivan who adheres to the view that the transfer of the stock should be taxed.

MASSACHUSETTS.

The case of Kingsbury et al v. Chapin, (1907) 196 Mass. 533; 82 NE. 462, presents a well reasoned opinion on this question. In this case the decedent was a resident of New Hampshire, who died possessed of shares of stock in several railroads doing business in a number of states and incorporated in each state. The Massachusetts supreme court, in part, stated: "In a case like the present, where corporate power is exercised under two franchises of the same kind, granted by two adjacent States, and where the ownership is represented by a single issue of stock, recog-

nized alike by both States, we think that, for jurisdictional purposes and determining values in imposing taxes, the stock in each State should be held to represent only the property within the State."

NEW YORK.

This state follows the rule of Massachusetts, as announced in the case above cited. The same rule is applied in case the company is a joint stock association organized in several states. Matter of Cooley, 186 N. Y. 220; 78 NE. 939; 10 L. R. A. (ns) 1010, see also the case of Matter of Willmer, 75 Misc. 62; 134 Sup. 686, affirmed in 153 App. Div. 804; 138 Sup. 649.

Proceeds of Insurance Policy—When Subject to Tax—The treasurer of state has adopted the rule that the proceeds of a life insurance policy payable to the decedent's estate is to be taxed, but if otherwise it is exempt.

IN GENERAL.

The courts are not all agreed upon the question of whether the proceeds of an insurance policy made in favor of a specific beneficiary is subject to the succession tax. In the case of Tyler v. Treasurer and Receiver General, —— Mass. ——, 115 NE. 300; L. R. A. 1917D, 633, it was held that the beneficiary under a life insurance policy does not take the proceeds "by deed, grant or gift, * * * made or intended to take effect in possession or enjoyment after the death of the grantor" but that such beneficiary has an immediate interest in the policy, and the money to become due under it, at the time the policy is issued; that this interest is therefore not postponed until the death of the insured.

The foregoing finds support also in the case of Bullen's Estate, 143 Wis. 512; 139 Am. St. Rep. 1114; 128 NW. 109; Re Parsons, 117 App. Div. 321; 102 N. Y. Supp. 168; Re Knoedler, 140 N. Y. 377; 35 NE. 601.

But the proceeds of policies of insurance wherein the insured, his executor, administrator, or his legal representatives are named as the beneficiaries, when paid into, and become a part of the assets of the decedent's estate, are subject to the inheritance tax. Re Knoedler, *supra.*

An early English case, wherein the proceeds of a policy of insurance were willed by the decedent to his sister, held that the tax should be applied on the right to the sister's succession to the benefits of the policy. Atty. Gen. v. Abdy (1862) 1 Hurlst. & C. (Eng.) 256; 32 L. J. Exch. N. S. 9; 8 Jur. N. S. 798; 6 L. T. N. S. 756.

The Time When an Estate Comes Into Existence and Tax Accrues—The statute provides that the tax "shall accrue at the death of the decedent owner." It has been well stated that the devolution of the property and the tax lien attach at the same time.

In the case of Re Estate of Wells (1909), 142 Iowa 255; 120 NW. 713, our supreme court announced the rule that when a will has been admitted to probate, the will speaks as of the time of the testator's death and determines those then entitled to the estate. In other words, the persons who are entitled to share in the estate of decedent are those who are entitled to the property at the instant the testator dies regardless of the

time when the will is admitted to probate or administration is petitioned for. The tax is to be determined according to the value of the property at the time of the death. This rule finds support in the cases from Massachusetts and New York.

In the case of Gilbertson v. Ballard (1904) 125 Iowa 420; 101 NW. 108, the supreme court held that the tax attached "*from the death of the* decedent"; in other words, the tax attaches *eo instante* upon the decedent's death. Hence if the death occurred before passage of the collateral inheritance tax statutes, the estate was not subject to the tax. The statute is not retroactive in its operation.

Life Estates—Waiver of Life Estate—Inheritance by Adopted Child —If a grantor makes a deed conveying a present interest in the land to collateral heirs, without in any way making the grantee's estate dependent upon the grantor's death, the grantees may take the property free from the collateral inheritance tax. The tax applies when the interest in the real estate, or enjoyment thereof, is postponed until after death of the grantor. In Re Bell's Estate (1911), 150 Iowa 725; 130 NW. 798. This decision was rendered under sec. 1467, of the Code.

While the case of Lamb v. Morrow (1908), 140 Iowa 89; 117 NW. 1118, was decided under section 1467 of the Code as amended by the 30th and 31st G. A., yet it does not involve the amendments but relates to matters now appearing in the foregoing section, namely; inheritance through an *adopted child,* and whether land granted in consideration of the care of the grantors during their life time by the grantee was subject to the tax. The court held that the failure to have the adoption papers acknowledged and recorded as required by statute was fatal to the claim of adoption. It further held that where the grantors and grantees enter into a *bona fide* contract whereby the grantors convey by deed to the grantees certain land, reserving to themselves a life estate, in consideration that the grantees will care for the grantors during the remainder of their lives, and the grantees thereupon take possession in order to fulfill the terms of the contract, and where *the grantors thereafter waive their life estate,* that the grantees may take free from the tax even though a will be admitted to probate wherein one of the grantors reaffirms the contract previously made. Other questions were determined which are not essential to this subject.

In the recent case of Brown v. Gulliford (1917), Iowa ...; 165 NW. 182, three sisters, who were the decedents conveyed to the defendant, Gulliford, by warranty deed a certain farm with full covenants of warranty, "reserving, however, unto the grantors herein, or to the survivor or survivors of them, a life estate in said land, and the use and occupancy, rents and profits of the same for the term of the natural life of said grantors, or the survivor or survivors of them." Later on, the defendant leased the farm from the decedents for the term of ten years, which was apparently for a term longer than any of the decedents would be probable to live. The decedents were to receive the sum of $400.00 per year as the rental value under the lease. The defendant went into possession of the premises under this lease, erected a house, constructed

other buildings and made general improvements and paid the taxes. At the death of the last of the three sisters, the state asserted that the defendant should pay the collateral inheritance tax since the deed was not "intended to take effect in possession, or in enjoyment after the death of the grantor."

The court held the "possession" and "enjoyment" was given to the defendant by virtue of the lease which in substance waived the reservation of the life estate on the payment of the $400.00 per year. It should be noted that there was no evidence or intimation in this case that any attempt was made to avoid the collateral inheritance laws of this state, the transaction was *bona fide* throughout. Further the court held that the state could challenge a "covinous conveyance, or one which pretending to be on full consideration," and show it to be voluntary.

It further stated that under our statute, the tax may not be avoided merely because the deed was made upon full consideration; and that consideration is material only when a question arises as to whether the conveyance is for the purpose of avoiding the tax. The payment of a consideration will not in itself exempt the grantees from the tax, but the amount and the manner of payment will have bearing upon whether the transfer has been made in good faith.

NEW YORK.

In Re Gould, 156 N. Y. 423; 51 NE. 287, holding that payment of consideration does not necessarily avoid payment of tax.

See page 35 hereof for cases sustaining this rule.

Reservation of Income for Life—Profits, etc.—Effect of—The owner of an estate cannot defeat the tax by any device which secures to him for life the income, profits, or enjoyments thereof. To prevent taxation the conveyance must be such as passes possession, the title, and the enjoyment of the property in the grantor's life time. Lamb v. Morrow, (1908) 140 Iowa 95; 18 L. R. A. (ns) 230; 117 NW 1118. Reaffirmed as to life estate in Brown v. Gulliford, ... Iowa ...; 165 NW. 182. Both cases citing and approving of Re Brandreth (N. Y.) reviewed in the following annotation.

NEW YORK.

This subject fully considered in Re Brandreth, 169 N. Y. 437; 62 NE. 563; 58 L. R. A. 148, where it was held that the transfer by the decedent of shares of stock to his daughters and the assigning by them of all dividends, etc., to their father, the decedent, for his lifetime and also giving him the power of voting the stock, that he took but a life interest or a life estate therein and that at his death the tax should be applied as the daughters were not entitled to "possession and enjoyment" of the stock or of the proceeds thereof until his death.

It was further held that a person may have a life estate in shares of corporate stock, the proceeds of a special fund, etc., as well as in real property; that where a transfer is made (1) "in contemplation of death" or (2) the "possession or enjoyment" of the property is postponed at or until the death of the grantor the tax should be applied.

Re Brandeth, *supra*, has been repeatedly cited and approved in both that state and in others, some of which are as follows: Re Cornell, 170 N. Y. 425; 63 NE. 445; Re Keeney, 194 N. Y. 285; 87 NE. 428; Re Skinner, 45 Misc. 562; 92 N. Y. Supp. 972.

MASSACHUSETTS.

New England Trust Co. v. Treasurer, 205 Mass. 282; 137 Am. St. Rep. 437; 91 NE. 379; State Street Trust Co. v. Treas., 209 Mass. 378; 95 NE. 851.

WISCONSIN.

In Re Bullen's Estate, 143 Wis. 533; 139 Am. St. Rep. 1114; 128 NW. 109.

Effect of a Transfer of Property Under Agreement to Pay Annuity and to Care for Grantor During His Life Time—In the case of Lewis v. Brown, (1918) ... Iowa ...; 166 NW. 99, the plaintiff had entered into a contract with A. J. Litter and wife whereby Litter and his wife "agreed to give, will and bequeath at the death of the last one of us living, our farm of 240 acres * * * to said party of the second part, Ernest Lewis. * * * For and in consideration of which the said second party agrees to pay an allowance of $1200 per year to said first parties during their life time or the life time of either of them." It also appeared that Lewis agreed to care for them in case they became enfeebled in mind or body as though they were his own parents by blood.

Prior to the present suit to collect the inheritance tax, another action had been adjudicated between this plaintiff Lewis, and certain other claimants to the estate of Litter, and it was therein held that the title had been transferred to Lewis by the decedents in their life time, and also that Lewis went into immediate possession and enjoyment under the conveyance. Under such a showing, the supreme court held the land was not subject to the inheritance tax. This decision was under section 1467 of the Code prior to the amendment of the 34th G. A., Chap. 36, whereby the following was inserted after the word "gift," namely; "or transfer made in contemplation of the death of the donor."

There is *dictum* that a transfer made for a valuable consideration in the form of a reasonable annuity to the grantor for life is not a "transfer in contemplation of death" within the terms of the statute. However, since this action arose under the statute before the amendment this point was not necessarily involved in the decision rendered in the foregoing case and is therefore to be regarded merely as *dictum*.

See also pages 34 and 37 hereof.

Bequests in Payment of Debt, etc.—For Care of Grantor During Life Time—There are no Iowa cases dealing with this point in so far as relates to collateral inheritance tax, except as shown in the preceding section where "possession and enjoyment" was given to the grantee by the deed of the grantor during his lifetime. Therefore, it will be noted that the preceding section does not cover the matter involved in this section.

The general rule that where a statute imposes a succession tax upon all property passing by will, that property bequeathed in pursuance of a

contract for services which have been fully performed at the time of the testator's death is subject to the tax, since the beneficiary receives the property by virtue of the will and not by virtue of the contract. The cases cited hereunder illustrate the application of this rule.

KANSAS.

Louis Mollier, a Catholic priest, residing in Kansas, agreed to will all of his property to a niece provided she would come and make her home with him and act as his housekeeper. She served him in this capacity until his death twenty years later. He executed a will in accordance with his agreement and at his death the state successfully maintained an action to collect the tax on the theory that the niece acquired the property by virtue of his will and that she was not a "*bona fide*" purchaser for full consideration in money or money's worth, as required to be in order to come within the exemption provided by statute. State of Kansas v. Mollier, Exrx., (1915) 96 Kans. 514; 152 Pac. 771; L. R. A. 1916C, 550.

NEW HAMPSHIRE.

In the case of Carter v. Craig (1914), 77 N. H. 200; 52 L. R. A. (ns) 211; 90 Atl. 598; Ann. Cas. 1914D, 1179, it appears that John P. French, a resident of New Hampshire, entered into a contract with a resident of Vermont, whereby the latter agreed to care for French and his wife during their lives, in consideration of which French agreed to convey the farm, stock, and tools to the resident of Vermont. The contract was fully carried out and the property was bequeathed and devised as agreed upon. It was held that Stone, the resident of Vermont, took the property by virtue of the provisions of the will and not under the contract, and was therefore liable for the succession tax.

NEW YORK.

Under the statute of this state providing that "a tax shall be and is hereby imposed upon the transfer of any property * * * when the transfer is by will" it was held a bequest of the late Jay Gould to his son, George Gould, of $5,000,000.00 stated in the will as being in payment of a debt for services was not exempt from the tax. Matter of Gould, (1898) 156 N. Y. 423; 51 NE. 287.

Again, it was held in Re Rogers (1902), 172 N. Y. 617; 64 NE. 1125, that the payment of a debt by legacy was subject to the transfer tax, the court stating that although the creditor was not bound to accept the legacy in payment of his debt, yet if he did so, there was no way of avoiding the tax.

And in Re Doty (1894), 7 Misc. 193; 27 N. Y. Supp. 653, it was held that a bequest made in consideration of medical care and attention was not exempt from taxation. The court lays down the rule that in such cases the legatee must elect either to establish a claim for his services and obtain payment in the usual manner and thus waive the legacy, or accept the legacy and let it be regarded as a gift, the taking of which subjects the legatee to the tax.

PENNSYLVANIA.

The supreme court of Pennsylvania has somewhat limited the rule in that state. In the case of Quin's Estate, (1880), 3 Phila. (Pa.) 340, it appears a gift was made by a testator to a creditor in full satisfaction of a legal claim, of the exact sum due the creditor. The court held this bequest was not subject to the tax and the decision seems to be based upon the fact that the claim of the creditor existed before as well as after the death of the testator and that the creditor's obligation was not to be subject to any condition; the provision of the will being regarded as a direction to discharge a recognized, liquidated obligation.

See also Gibbon's Estate, (1883) 16 Phila. (Pa.) 218; 13 W. N. C. 99.

ENGLISH RULE.

The rule is established in England that if the decedent is a creditor of a legatee and in his will provided for the remission or forgiveness of the debt, it is to be treated as a legacy and taxed as such. Atty.-Gen. v. Holbrook, 12 Price 407; 3 Y. & J. 114; Morris v. Livie; 11 L. J. Ch. 172; 1 Y. and Coll. 380; 20 Eng. Ch. 380; 62 Eng. Reprint 934.

Transfers of Property under Contract to Make a Will, etc.—There are no Iowa cases dealing directly with this question from the standpoint of inheritance taxation. But see page 35 hereof where property was conveyed under agreement to care for grantors, and the property actually transferred by grantors during their lifetime.

MASSACHUSETTS.

In the case of Clarke v. Treas. & Receiver General, (1917) 226 Mass. 301, the testator entered into a contract with S. Elizabeth Willgoose to employ her as his housekeeper for the remainder of his life at $3.50 per week and further stipulated that within nine days from the date of the contract that he would execute a will "and therein bequeath to the said S. Elizabeth the sum of $2,000, with the additional bequest of $500, or a proportional part thereof for each and every year after April 1, 1907, until his decease." Pursuant to this contract he made a will conforming to the contract. At his death the legacy amounted to $6,-030.14 and it was held to be taxable. The legatee was not a *bona fide* purchaser within the meaning of the statute. The court in part states, "the contract implies that she was to take and receive it (the legacy) subject to the general laws respecting such transfers." Since the general laws taxed such transfers it was properly taxed even though made pursuant to a contract.

NEW YORK.

In the Matter of Kidd, 188 N. Y. 274; 80 NE. 924, the decedent, Kidd, agreed, during his life time, to adopt his step-daughter and to make her his heir and in case he had no other children to will all his property to her. Kidd failed to carry out this agreement and the step-daughter was forced to legal proceedings to obtain the property. It was held by the New York court that on succession to the proceeds of Kidd's estate,

amounting to $800,000, that she was liable for the transfer tax. The fact that she had been forced to resort to legal proceedings would not in any way prevent the state from assessing the tax.

Effect of Waiver of Bequest—In the case of Re Estate of Stone, (1906) 132 Iowa 136; 109 NW. 455, it was held that where a legatee, who would be liable to the tax, renounces the will and agrees that the entire estate be distributed to the widow and the lineal descendants according to the law of descent, the state had no right to levy a tax on the property which the legatee refused to accept. The opinion of the court is based on the fact that the tax is not on the property itself but on the right to the succession of property; hence, if the right to succession be waived, the state has no claim for the tax. There is no intimation in this case of fraud or of a collateral agreement among the heirs to reimburse this legatee in consideration of his waiver.

Blakemore and Bancroft in their work on "Inheritance Taxes," page 126, speak of the case of Re Estate of Stone as the "most effective method of evading the collateral inheritance yet devised."

NEW YORK.

The courts of this state have adhered to the rule that if a legatee disclaims the bequest that a tax should not be levied as to such legatee but that the tax should be assessed on the succession to such gift as though it were actually bequeathed in the will to those to whom it eventually falls as a result of the renunciation. See Re Wolfe, 179 N. Y. 599, 72 NE. 1152 affirming 89 App. Div. 349. Also see Re Cook, 187 N. Y. 253; 79 NE. 991 approving of Re Wolfe. The tax is on the transfer of the property, and if a transfer fails because of disclaimer there should be none assessed.

Effect of Death of Beneficiary Before That of Testator—It frequently happens that a beneficiary named in a will dies before the testator and in such cases, where there is no contrary intention manifest by the terms of the will, the property passes to the heirs of such legatee. This is in accord with the provision of Sec. 3281 of the Code. It is easy enough to thus determine who shall ultimately receive the property but whether such beneficiaries receive the property as heirs of the legatee, or as heirs of the testator, is not so ready of solution. There is but one case in Iowa considering this proposition from the standpoint of collateral inheritance taxation.

In the case of Re Hulett's Estate, (1903) 121 Iowa 423; 96 NW. 952, Sarah J. Hulett executed a will in favor of her son, Wm. M. Hulett, making him the sole beneficiary to the exclusion of another son and a daughter. Wm. M. Hulett executed a will in favor of his mother. Thereafter, Sarah J. Hulett died and shortly following Wm. M. Hulett died without changing the terms of his will whereby his mother was made sole beneficiary. The question was then raised whether the brother and sister of Wm. M. took as his heirs, and were subject to the tax, or whether they received the property as the heirs of the mother and were thus exempt. Our court adhered to the view that they received the property as heirs, not of their mother, but as heirs of Wm. M. Hulett, and

that therefore they were subject to the collateral inheritance of this state. This conclusion was reached after careful consideration of our statute. It seems also to be the rule in a number of the various states. See citations in Re Hulett's Estate.

The rule of England is *contra* to that in force in most of our states. It is given in this work in order to assist in giving a clearer view of our own holdings.

ENGLISH RULE.

By virtue of a peculiar statute, the courts of England arrive at a different solution of this problem. They recognize a fiction which in effect is that the devisee, who in fact dies before the testator, is considered to survive the testator and to immediately die thereafter. This fiction is well exemplified in the case of Re Scott. In this case, John Scott, Jr., made a will in favor of his executors conveying all of his property, amounting to approximately $400,000.00, to be held in trust for his daughter Muriel Elsie Scott. Shortly after the death of John Scott, Jr., his father John Scott, Sr., died leaving a will disposing of his property amounting to about $400,000.00 to John Scott, Jr. The question was then raised whether Muriel Elsie Scott would be required to pay one succession tax on taking her father's interest in the estate of John Scott, Sr., or whether she would be required to pay the tax twice. The English court held that, in view of their fiction in such cases that the tax should be levied twice, once when the property descended from John Scott, Sr., to his son, and again when the property descended from this son, John Scott, Jr., to his daughter. In Re Scott, 1 Q. B. 228; 5 British Ruling Case, 840. Reported also in 70 L. J. Q. B. N. S. 66; 65 J. P. 84; 49 Week. Rep. 178; 83 L. T. N. S. 613; 17 Times L. R. 148.

Vested Remainders—When Exempt from Inheritance Taxation—Where a remainder becomes vested in collateral heirs prior to enactment of the statute on collateral inheritance tax, the state cannot thereafter subject the heirs to the payment of the tax at the expiration of the life estate on the theory that a statute providing for collateral inheritance tax passed before termination of life estate granted such authority. Lacey v. State Treasurer, (1911) 152 Iowa 477; 132 NW. 843.

When interests in real property become vested under a trust deed executed prior to enactment of the statute, such interests are exempt from the tax subsequently provided. This is the rule even though the interest acquired is subject to contingencies which might affect the future enjoyment of it. Morrow v. Depper, (1911) 153 Iowa 341; 133 NW. 729.

CALIFORNIA.

Same rule recognized in Hunt v. Wieht, ... Cal. ...; 162 Pac. 639; L. R. A. 1917C, 961, where grantor executed and delivered deed to a third party to hold in escrow until his death, when it was to be delivered to grantor's wife.

NEW YORK.

Same rule followed. See Re Pell, 171 N. Y. 48; 89 Am. St. Rep. 791; 63 NE. 789; 57 L. R. A. 540.

MICHIGAN.

The statute of this state is a substantial copy of that of New York. The courts therefore adhere to the same rule as to remainders vesting prior to enactment of statute as announced in New York and followed in Iowa. Miller v. McLaughlin, 141 Mich. 433; 104 NW. 777.

MINNESOTA.

An estate vested prior to enactment of statutes providing for an inheritance tax is exempt from the tax subsequently provided for. State ex rel. Tozer v. Probate Court, 102 Minn. 285; 133 NW. 888.

"Double Taxation"—Payment of Tax in one State no Bar to Collection in Another—Where a resident of Chicago dies in that city, and leaves money on deposit in the city of New York, which he may withdraw, upon giving five days' notice of intention so to do, it was held by the Supreme Court of the United States in Blackstone v. Miller, 188 U. S. 203, 23 Sup. Ct. 277; 47 L. Ed. 439, that the state of New York was entitled to levy a tax on the right of succession to the money in that state, even though the state of Illinois might levy a tax on the right to succession by virtue of its statutes The rule is well established that payment of the tax in one state where the property is located does not bar the state of which the decedent was a resident from insisting on the payment of the tax in that state.

CALIFORNIA.

Re Estate of Hodges, ... Calif. ...; 150 Pac. 344; L. R. A. 1916A, 837.

MICHIGAN.

In Re Rogers' Estate, 149 Mich. 305; 112 N. W. 931; 11 L. R. A. (N. S.) 1134.

UNITED STATES.

In Coe v. Errol, 116 U. S. 517, 524; 29 L. ed. 715, 717; 6 Sup. Ct. Rep. 475; Knowlton v. Moore, 178 U. S. 53; 44 L. ed. 974; 20 Sup. Ct. Rep. 747.

Non-Resident Aliens—It will be noted that the law provides for a higher rate of tax in case of non-resident aliens having succession to property in this state. However, if the United States has entered into a treaty relation with the foreign state of which the alien is a resident, and the treaty is in conflict with the provision of our statute, the treaty will control in the matter the right of succession to the property.

Under the constitution of the United States, Article 6, provision is made that the constitution, laws made in pursuance thereof and treaties with foreign nations, shall be the supreme law of the land, notwithstanding anything in the constitution or laws of any state to the contrary. Therefore, if the United States has entered into a treaty and thereby granted the citizens of a foreign country the right to inherit property in this country on the same basis as a citizen of any state,

the increased rate would be prohibited since treaties of the United States are superior to the laws of any state. Opel v. Shoup, (1896) 100, Iowa, 407; 69 NW. 560; 37 L. R. A. 583; Doehrel v. Hillmer, (1897) 102 Iowa, 169; 71 NW. 204; in Re Estate of Anderson, (1914) 166 Iowa, 617; 147 NW. 1098, affirmed 245 U. S. 170; 38 Sup. Ct. Rep. 109; 62 L. Ed. ...

The United States has entered into treaties with many of the nations and considered the matter of inheritance by citizens of the respective countries. Extracts from these treaties are given in this compilation under the head of "Treaties." For detailed information and citations to cases involving construction of these treaties see page 127 hereof.

Unknown Heirs and Heirs Whose Residence is Unknown Subject to the Tax—Sec. 1481-a42, Supplement, 1913. Whenever the heirs or persons entitled to any estate, or any interest therein, are unknown or their place of residence cannot with reasonable certainty, be ascertained, a tax of 5% shall be paid to the treasurer of state upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty (60) days after such determination and before delivery of such estate or property, an amount equal to the difference between five percentum, the amount paid, and the amount which such person should pay under the provisions of this act.

Under this section *all unknown heirs*, whether direct or collateral, are subject to the tax.

For a case where a refund was made to an heir after the estate was held to have escheated to the state for want of claimants, see McKeown v. Brown, Treas., (1914) 167 Iowa 489; 149 NW. 593, more fully cited herein on page 143.

CHAPTER III

WHEN TAX IS NOT TO BE IMPOSED OR COLLECTED—EXEMPTIONS AND DEDUCTIONS.

Introductory—The preceding chapter provided that the tax should be imposed and collected in every case of succession to property at the death of another. In this chapter exceptions to that rule will be considered. The following section of the statute provides:

When the Tax is not to be Imposed or Collected.—Sec. 1481-a1 Supplement, 1913. The tax imposed by this act shall not be collected,

1st. When the entire estate of the decedent does not exceed the sum of one thousand dollars ($1,000) after deducting the debts as defined in this act.

2nd. When the property passes to the husband or wife.

3rd. When the property passes to the father, mother, lineal descendant, adopted child, or the lineal descendant of an adopted child of decedent.

4th. When the property passes to educational and religious societies or institutions, public libraries and public art galleries within this state and open to the free use of the public.

5th. Property passing to or for hospitals within this state open to the public, and not operated for gain, or to societies within this state organized for purposes of public charity, including cemetery associations, but not including societies maintained by fees, dues, or assessments in whose benefits the public may not share.

6th. Bequests for the care and maintenance of the cemetery or burial lot of decedent and his family, and bequests not to exceed five hundred dollars ($500.00) in any estate, to or for the performance of a religious service or services by some person regularly ordained, authorized or licensed by any religious society to perform such service to be performed for or in behalf of the testator, or some person named in his last will, provided such person so named is, or would be exempt from the tax imposed by this act.

7th. When the property passes to a municipal or political corporation within this state for a purely public purpose.

Div. 1. Value of Estate—Debts—If the value of the entire estate does not exceed $1,000.00 after deducting the debts the tax is not to be collected. The Treasurer of State has followed the rule that real property outside the state is to be considered in determining the value of the estate as the statute provides for exemption only in case the *entire estate* does not exceed the stated sum, etc.

For annotations on what constitutes a debt, see page 46 hereof under sec. 1481-a2, Supplement 1913.

Div. 2. When Property Passes to Husband or Wife—The question of the right of the state to collect the tax from a divorced wife who has been named a legatee in her former husband's will has not been determined in this state. However, there is a well established line of authorities in this state holding that an absolute divorce puts an end to all rights resting upon the marriage and not actually vested, and that upon divorce all interests, or rights, in property of the other are fully barred and terminated. See Marvin v. Marvin, (1882) 59 Iowa 699; 13 NW. 851; Hamilton v. McNeill, (1911) 150 Iowa 470; 129 NW. 480. It would therefore appear that in case a divorced wife is made a beneficiary under the will of her former husband that she should be subject to the tax fixed by law upon succession to the property.

Div. 3. Parents and Children—The statute exempts an adopted child from the payment of the collateral inheritance tax. The term "adopted child" refers to a child who has been adopted in the manner required by law. The statute provides what shall be necessary to be done in order to confer upon the child all the rights, privileges, and responsibilities which would appertain to the child if born in lawful wedlock. Courts of equity cannot dispense with the regulations prescribed by statute. Long v. Hewitt, (1876) 44 Iowa 363. And one who claims property as an adopted child must show that the statute has been complied with, or the tax will be assessed. Lamb v. Morrow, (1908) 140 Iowa 89; 117 NW. 1118; 18 L. R. A. (ns) 226.

PENNSYLVANIA.

There are several cases in Pennsylvania to the effect that an illegitimate child must pay the inheritance tax on succession to a legacy from his putative father. See Commonwealth v. Ferguson, 137 Pa. 595; 20 Atl. 870; 10 L. R. A. 240.

It has been further held in Pennsylvania that when a grandfather adopts a grandchild that at the death of the grandfather, who died intestate, that such adopted child would inherit his property only as a child and not both as child and grandchild. This opinion seems to be based upon a statutory provision that such adopted child should share the inheritance only as one of "the other children." Since an own child could not inherit except as child, therefore this adopted grandchild was limited to the rights of an "own child." Morgan v. Reel, 213 Pa. 90; 62 Atl. 253.

Div. 4. Educational and Religious Institutions—In construing division 4, the supreme court of Iowa in the recent case of In Re Peterson's Will, ... Iowa ...; 166 NW. 168, (Jan. 17, 1918), held that an educa-

tional society organized under the laws of New York was exempt from the tax as the words "within this state" refers solely to public art galleries." This decision is based largely upon a grammatical construction, holding that the comma between "institutions" places "educational and religious societies or institutions" in a class separate and distinct from "public libraries and public art galleries." This opinion results in making an exemption at war with the exemption statutes of many states. A rehearing has been granted and this opinion is therefore suspended.

Under Sec. 1467 of the Code, which provided for the exemptions in the original law, it was held that a bequest to the "Burlington, Iowa, branch of the Salvation Army" was exempt from the tax even though the Burlington branch was an unincorporated organization which was under the direction and control of the Salvation Army, a corporation organized under the laws of New York. In Re Estate of Crawford, (1910) 148 Iowa 60; 126 NW. 774; Ann. Cas. 1912B, 992. *In dictum* the court said, "It must be admitted, we think, that a legacy to or for * * * a religious or charitable institution organized under the corporation laws of another state is *not exempt* from the inheritance tax." However, since the fund was designated for local work in the case above cited the court held it exempt from the tax.

GENERAL RULE.

The questions of bequests to foreign corporations has been so clearly stated in 37 Cyc. 1573, that it is set out at length, as follows: "A bequest to a foreign corporation is not exempt from payment of the legacy tax, although such corporation, by reason of its character as a charitable, religious, or educational institution, is exempt from taxation in the state of its domicile, or although domestic corporations of the same class are exempt; and it is immaterial that such corporation has been empowered by law to take and hold property in the taxing state, or that the fund provided in the bequest is to be used within the taxing state."

ILLINOIS.

Charitable bequests to foreign corporations are not exempt from the collateral inheritance tax. In Re Speed, 216 Ill. 26; 108 Am. St. Rep. 189; 74 NE. 809; People v. Society, 87 Ill. 246.

MASSACHUSETTS.

The case of Minot v. Winthrop, 162 Mass. 126; 26 L. R. A. 259; 38 NE. 512, holds, charitable, educational, or religious societies of other states not exempt from the succession tax.

MISSOURI.

The case of Re Assessment of the Collateral Inheritance Tax in the Estate of James Quick, .. Mo. .., 105 S. W.; 51 L. R. A. (ns) 817, follows the rule of New Hampshire.

NEW HAMPSHIRE.

The supreme court of this state, under statutory provisions providing for the exemption of the property of charitable associations "in this state"

"devoted exclusively to the uses and purposes of public charity" has gone a step beyond that of any other state and held that money devised to a local auxiliary of a foreign missionary society for the purpose of converting "heathen women" in foreign lands was subject to the collateral inheritance tax. Carter v. Whitcomb, 74 N. H. 490; 17 L. R. A. (ns) 737; 69 Atl. 779. The court of this state adheres to the thought that the exemption is intended to benefit the residents of the state in a substantial manner, and if such gift does not accomplish this purpose it is to be taxed.

NEW JERSEY.

Charitable institutions in foreign states are not exempt from the payment of the tax on taking property in this state. Alfred University v. Hancock, 69 N. J. Eq. 473; 46 Atl. 178.

NEW YORK.

Formerly charitable corporations organized under the laws of other states were required to pay the tax in order to have succession to property within the state of New York. In Re Prime's Estate, 136 N. Y. 347; 49 N. Y. S. R. 658; 32 NE. 1091; 18 L. R. A. 713, repeatedly cited and approved. Under the present statute such bequests are exempt from the tax, with the exception that if any officer, member or employee of the corporation receives any pecuniary profit other than a reasonable compensation for services, etc., the exemption shall not apply.

OHIO.

Foreign charitable corporations not exempt from the tax. Humphreys v. State, 70 Ohio St. 67; 70 NE. 957; 65 L. R. A. 776; 101 Am. St. Rep. 888; 1 Ann. Cas. 233.

Div. 5. Charitable Institutions, Hospitals, etc.—Prior to the enactment of the foregoing section all exemptions to the tax were stated in Sec. 1467 of the Code which exempted "charitable, educational, or religious societies or institutions within this state." Under this section the supreme court held the Masonic Lodge a "charitable institution" in the case of Morrow v. Smith, (1910) 145 Iowa 514; 124 NW. 316; 26 L. R. A. (ns) 696. The present statute would probably not be construed to exempt such an institution as it is "maintained by fees," etc., and "the public may not share" in its benefits.

See also annotations under Div. 7 hereof.

Div. 6. For Cemetery Lots—Mass, etc.—Prior to the enactment of this statute, the supreme court in Morrow v. Durant, (1908) 140 Iowa 437; 118 NW. 781, held that the setting aside of $2000.00 for erection of a "tomb" for decedent was not as a matter of law an unreasonable sum. What is reasonable or unreasonable is a mixed question of law and fact. Sums set aside for tombs are not subject to tax.

Adherents of the Catholic faith frequently made bequests in favor of priests to compensate them for saying Mass in their behalf. Such be-

quests are valid in this state. See the case of Moran v. Moran, (1897) 104 Iowa 216; 73 NW. 617; 65 Am. St. Rep. 443; 39 L. R. A. 204. Under the exceptions of section 6 such bequests should not be taxed if less than $500.00. However, in some states these "prayer trusts" are declared to be invalid chiefly for the reason that there is a want of living beneficiaries. 6 Cyc. 920.

Div. 7. Requests to Municipal Corporations—Under the former statute exempting bequests to or for "charitable * * * societies and institutions" the supreme court held a bequest of certain property "in perpetuity to the dependent poor persons of Delaware County (Iowa) who are maintained wholly or in part at the expense of said county" and designating the board of supervisors as trustees of said property, to be exempt from the tax as bequest to a charitable institution. The court also held that a county being charged with the duty of relieving and supporting the poor, is to that extent a charitable organization. In Re Estate Spangler, (1910) 148 Iowa 333; 127 NW. 625. This decision was rendered prior to the enactment of the exception in favor of bequests to municipal and political corporations *within this state for a purely public purpose.*

It has never been determined what constitutes "a purely public purpose" by our supreme court so far as collateral inheritance is concerned. Perhaps the definition of "a purely public charity" as defined by the Kentucky supreme court may assist in arriving at a proper view of the Iowa statute.

KENTUCKY.

The constitution of this state exempts from taxation "institutions of purely public charity." In view of this provision it has been held that the property of a commandery of the Knights Templar is not exempt even though it frequently makes gifts for charitable purposes. In discussing the definition of a "public charity" the court considers the generally accepted classification of charitable gifts as follows: "(1) gifts for eleemosynary purposes; (2) gifts for educational purposes; (3) gifts for religious purposes; and (4) gifts for public purposes." It is manifest the Knights Templar could not be classed as a purely charitable institution under any of the four classifications. Vogt v. City of Louisville, 173 Ky. 119.

"Debts" defined. Sec. 1481-a2, Supplement, 1913. The term "debts" as used in this act shall include, in addition to debts owing by the decedent at the time of his death, the local or state taxes due from the estate in January of the year of his death, a reasonable sum for funeral expenses, court costs, the cost of appraisement made for the purpose of assessing the collateral inheritance tax, the statutory fees of executors, administrators, or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount, to be approved by the

court, for the ordinary probate proceedings in said estate and no other sum; but said debts shall not be deducted unless the same are approved and allowed by the court within eighteen (18) months from the death of the decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county.

When Taxes are to be Deducted as a "Debt"—Not all taxes are to be deducted as a debt of the decedent, it is only "local or state taxes due from the estate in January of the year of his death." The Treasurer of State considers as "debts" ordinary taxes, and special assessments when due and payable, but he does not consider sums due or payable to the federal government as income tax, or as federal inheritance tax, as "debts"; nor is the amount of inheritance tax paid in other states to be deducted.

NEW YORK.

Taxes which are not assessed, nor a lien, nor payable at the time of the decedent's death are not to be deducted as a "debt" of the estate. Re Maresi's Estate, 74 App. Div. 76; 77 Sup. 76.

But taxes actually levied, due, owing, and capable of payment at the time of the decedent's death are proper deductions as "debts" of the estate. Re Liss Estate, 78 Sup. 969; 39 Misc. 123.

Sums due the federal government as inheritance taxes are not to be deducted. Matter of Gihon, 169 N. Y. 443; 62 NE. 561.

Inheritance taxes imposed by a foreign state are not proper deductions as "debts" of the estate. Matter of Penfold, 216 N. Y. 171; 110 NE. 499; and Matter of Gihon, 169 N. Y. 443; 62 NE. 561.

PENNSYLVANIA.

A different rule has been announced in this state under a statute that imposed the tax upon "the clear value of the property or estate passing to the legatee or devisee." Hence under this section it has been held that the transfer tax imposed by the State of New Jersey on shares of stock should be deducted in ascertaining the value of the stock in Pennsylvania. Van Beil's Estate, (1917) 257 Pa. 155.

Funeral Expenses as Debts—What constitutes a reasonable sum as funeral expenses depends upon circumstances. It is a mixed question of law and fact. Hence to set aside $2000.00 for erection of tomb is not unreasonable as a matter of law. Morrow v. Durant, (1908) 140 Iowa 437; 118 NW. 781. This case recognizes that the cost of tomb may be considered as a debt.

NEW YORK.

There is one case in New York which allowed as "reasonable" the following items connected with the funeral of the deceased: $470.00 for a burial lot, $200.00 for a fence around the lot, and $35.00 for sodding the

lot. This expenditure was held to be reasonable in view of the facts in the case and where it appeared there was $10,351.00 in the residuary estate. Re Liss' Estate, 78 Sup. 969; 39 Misc. 123.

Court Costs as "Debts"—All court costs incurred in the process of administration are not necessarily to be taxed against the estate. See Sec. 1481-a35, Supplement 1913, page 124 hereof. Nor are all court costs to be deducted as "debts" as may be found from a reading of the opinions from New York and Pennsylvania.

In Re Estate of Wells, (1909) 142 Iowa 255; 120 NW. 713, the testator left two wills whereby all of his property was disposed of to persons subject to the tax. A contest arose and a stipulation was entered into whereby one will was admitted to probate. The question then arose as to who was liable for the tax. The court held that the persons who were entitled to the property at the time of the testator's death were liable therefor. In making the stipulation it was agreed that two of the contesting heirs, who were not entitled to any property under the will were to be paid $75,000 each. The administrator claimed these sums to be debts of the estate, and exempt from taxation, and that they should be deducted from the assets in determining the tax on the remainder of the estate. The court held that payments made in the adjustment of conflicting claims cannot be construed as debts, nor treated as expenses in its settlement. Therefore the sums paid to the contesting heirs was subject to the tax but on the theory that it was property of the devisee which she directed the executor to pay to the contesting heirs.

NEW YORK.

Although the court may tax costs against an estate in favor of successful contestants of a will, yet the costs of such a contest are not to be deducted as "debts" of the estate or as court costs. Such costs are practically a charge upon the interests of such contestants for the benefit of their attorneys and therefore are not deductible. Matter of Westurn, 152 N. Y. 93; 46 NE. 315.

If the court cost is incurred in protecting the estate such expense may be deducted in calculating the tax. Matter of Gihon, 169 N. Y. 443; 62 NE. 561.

On the other hand if it appears that the court costs were caused by a dispute among the heirs or beneficiaries the costs should not be deducted. It was so held in the Matter of Thrall, 157 N. Y. 46; 51 NE. 411, wherein an attempt was made to have $3,500.00 deducted as costs, the sum being the estimated expense incurred by the executors in their representative capacity, and as individuals, in ascertaining the construction of the will.

PENNSYLVANIA.

The supreme court of this state has stated that "an executor is not bound to defend his testator's will. If he undertakes to do so, it must be as the agent and in the interest of those benefited by his actions." Hence costs incurred as attorney fees in sustaining a will are not to be deducted. Tabers Estate, (1917) 357 Pa. 81.

Cost of Appraisement—As a "Debt"—Appraisers' fees should be deducted as a debt of the estate. Section 1290-a, Supplemental Supplement, 1915, fixes the fees of the appraisers, it is as follows: "That the compensation of appraisers appointed to appraise property belonging to any estate as a basis for the assessment of the collateral inheritance tax shall be three dollars per day for each appraiser and mileage as hereinafter provided and in other cases where the compensation of appraisers is not now fixed by statute, shall be two dollars per day for each appraiser and five cents a mile for the distance traveled in going to and returning from the place of appraisement, to be paid out of the property appraised or by the owner or owners thereof."

Fees of Executor or Administrator—As a "Debt"—Relying upon an opinion furnished by the Attorney-General's Office, the Treasurer of State adheres to the rule that the fees of an executor, administrator or trustee, which may be deducted as a debt from an estate subject to the payment of a collateral inheritance tax, must be based upon and limited to the personal estate and so much only of the real estate as may be sold for the payment of debts. This view was reached after considering sec. 3415 of the Code which provides that the executor shall receive a certain per cent of the value of the property passing through his hands in compensation for his services as executor.

Money Expended under Orders of Court as Debts—Family Allowance—There are no cases in Iowa upon this question but the Treasurer of State has adopted the rule that widow's allowance, provided for by statute, may be deducted as a debt in determining the value of the estate. The following cases illustrate the rule in other states.

CALIFORNIA.

The rule in this state is that funds lawfully diverted by the probate court from the purposes declared by will or the laws of succession are to be treated as debts of the estate and deducted accordingly. Hence, it has been held that a family allowance, provided for by statute, and distributed during the administration of the estate to the decedent's family was not subject to the tax. Re Estate of Kennedy, 157 Cal. 517; 108 Pac. 280; 29 L. R. A. (ns) 428. This case cites with approval the case of Morrow v. Durrant, 140 Iowa 437; 118 NW. 781; 23 L. R. A. (ns) 474, where the Iowa court permitted the cost of a monument to be deducted as a debt.

ILLINOIS.

A *contra* rule was adopted in Illinois in the case of Billings v. People, (1901) 189 Ill. 472; 59 L. R. A. 807; 59 NE. 798, and adhered to in People v. Forsyth, 273 Ill. 141; 112 NE. 378.

MINNESOTA.

The widow's allowance was held to be deductible in the case of the State v. Probate Court, — Minn. —; 163 NW. 285; L. R. A. 1917F, 436.

MONTANA.

Same rule recognized as to widow's allowance in Re Blackburn, — Mont. —; 152 Pac. 31.

TENNESSEE.

Widow's allowance is to be deducted. Re Crenshaw v. Moore, 124 Tenn. 528; 137 SW. 924; 34 L. R. A. (ns) 1161.

WISCONSIN.

The widow's allowance deducted. Re Smith, 161 Wis. 588; 155 NW. 109.

Payment of Sum Fixed by Ante-nuptial Contract as a Debt—This question has never been presented to our court for consideration. There is confusion in the decisions of the courts on the question as disclosed by the cases from Illinois and from New York. After a review of the cases the thought suggests itself, why should such payments be held to be exempt from the tax when a bequest made in pursuance of a contract to execute a will is uniformly taxed? It is a matter that will bear serious thought.

ILLINOIS.

In People v. Field, 248 Ill. 147; 93 NE. 721; 33 L. R. A. (ns) 230, it appears that prior to marriage the late Marshall Field entered into an ante-nuptial contract with his intended wife, whereby she was to take the sum of one million dollars in event she survived him, in lieu of all rights or interests she might have in his estate in the absence of such an agreement. It was held by the supreme court of Illinois, that under their statute, which taxes all dower rights of a widow exceeding in value $20,000.00, that the sum mentioned in the contract should be taxed. In the strict sense of the term this million dollars was but a "substitute for and in lieu of dower and other rights, it must for the purpose of the inheritance tax, be treated the same as dower would, and is not to be considered an indebtedness to be deducted from the market value of the estate." Therefore the executor was not allowed to deduct the amount in determining the value of Marshall Field's estate.

This case finds approval in People v. Union Trust Co., 255 Ill. 168; 99 NE. 377; L. R. A. 1915D, 450.

NEW YORK.

Directly opposed to the holding of the Illinois supreme court is the case of Re Baker, 83 App. Div. 530; 82 Sup. 390, affirmed in 178 N. Y. 575; 70 NE. 1094, wherein the New York court of appeals held that the sum stipulated in an ante-nuptial contract was a *debt* of the estate and should not be subject to taxation any more than a *debt* represented by a note or a bond.

Amount Due on a Mortgage—As a "Debt"—Repairs—Contingent Liability—There are no cases in Iowa upon these three propositions.

However, authority is not wanting in other jurisdictions. The Treasurer of State has adhered to the rule that repairs are not to be deducted as debts of the estate. The following cases from Massachusetts and New York may serve as an aid in such matters.

See also page 63 hereof.

MASSACHUSETTS.

The rule in this state is that the amount of indebtedness under a mortgage is to be subtracted from the value of the real estate in determining the amount upon which the tax shall be computed. Thus where the decedent, owner of property in Massachusetts, resided in New Jersey, the state of Massachusetts was held not to be entitled to have the encumberance on the real property considered as an ordinary debt to be deducted from the personal estate; but that the estate within the taxing jurisdiction of Massachusetts was the equity of redemption, or the value of the land less the mortgage. The attempt of the state to compel personal property to be brought from New Jersey sufficient to pay the indebtedness on the land in Massachusetts was held to be improper. McCurdy v. McCurdy, (1908), 197 Mass. 248; 83 NE. 881; 16 L. R. A. (ns) 329.

NEW YORK.

The rule in New York is that the amount due on notes secured by mortgages on land of the decedent are to be deducted from the taxable value of the land and not from the personal property of the estate as an ordinary debt. Matter of Offerman, 25 App. Div. 94; 48 Sup. 993; followed in Matter of Murphy, 32 App. Div. 627; 53 Sup. 1110, and affirmed in 157 N. Y. 679 without an opinion. This is the rule even though the testator directs his executors to pay the mortgage out of his personal estate. The appraisers therefore should not deduct the amount of mortgages due on real property from the value of the personal estate. Matter of Maresi, 74 App. Div. 76; 77 Sup. 76.

Where a testator bequeaths real property to another which is subject to a mortgage, and there is no direction in the will as to the payment of the mortgage, the beneficiary takes the property subject to the mortgage. Matter of Kene, 8 Misc. 102; 29 Sup. 1078.

Contingent liability on a bond as a surety should not be deducted as a debt. Nor should liability on a note secured by a mortgage be deducted where the decedent has deeded the mortgaged premises to another. See Gleason and Otis on "Inheritance Taxation," page 296 and citations of New York cases therein given.

Likewise repairs on real property contracted for by the decedent during his lifetime and not completed until after his death are to be deducted from the value of the real property and not from the personal estate of the decedent. See Matter of Kemp, 7 App. Div. 609; 40 Sup. 1144; affirmed in 151 N. Y. 619; 45 NE. 1132. Such repairs or improvements should be considered by the appraisers in determining the value of the real property.

CHAPTER IV

ASSESSMENT AND COLLECTION OF THE TAX—COMPUTATION OF TAX—WHEN AND WHERE PAID—REFUNDS.

The Reporting of Property and Persons Liable for the Payment of Inheritance Tax—Our statute provides that the executor or administrator shall report both property and persons liable for the payment of the inheritance tax. Likewise, the heirs are under obligation to report property they receive which is subject to the tax when no executor or administrator has been appointed. Furthermore, the Treasurer of State may ask for the appointment of an administrator in case an estate subject to the tax is not being administered upon within four months after the death of the decedent. The clerk of the court should also report estates subject to the tax.

It will be noted that sec. 1481-a26, Supplement, 1913, covers largely the same matter that appears in sec. 1468 of the Code. Both sections are to be construed together if possible and thus both given force and effect. However, if such a construction cannot be made, or there is a conflict between the sections, the rule is that the one last enacted should prevail. This doctrine has long obtained in Iowa. See Edgar v. Greer, (1859) 8 Iowa 393a.

In case the assets of an estate consist wholly of personal property no inventory is required to be filed other than the one required by law to be filed in ordinary estates. However, before the administrator, or executor, may be discharged he must file with the Treasurer of State a complete statement of the assets and liabilities of the estate in the manner provided for in Form No. 23, set forth on page 116 hereof.

Duty of Executor, etc., to Report Real Estate Subject to Tax—Entry to be Made in Lien Book.—Sec. 1468 of the Code. It shall be the duty of the executor, administrator or trustee, immediately upon his appointment, to make and file a separate inventory, any will to the contrary notwithstanding, of all the real estate of the decedent liable to such tax, and to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular part of said real estate is situated, and no conveyance of said estate or interest therein, which is subject to such tax before or after the entering of said lien, shall discharge the estate so conveyed from the operation thereof.

For procedure under this section and for a form to be used in reporting real property and persons subject to the tax, see page 56 hereof.

Heirs at Law to Report to Clerk Property Subject to the Tax—Failure to Report—Penalty—Sec. 1481-a28, Supplement, 1913. Whenever any property passing under the intestate laws may be subject to the tax imposed by this act, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety (90) days next following the death of such intestate, a report in writing embodying therein substantially the information required by the second preceding section (sec. 1481-a26, Supplement, 1913, page 54 hereof) of this act. Failure to furnish such report or to probate the will in a testate estate shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest or other penalties imposed by this act.

Suppression or Alteration of Wills—Penalty For—The foregoing provision provides that failure to probate a will does not relieve the estate from the inheritance tax lien, or entitle the persons to receive the property of the decedent exempt from the payment of the tax or other penalties provided by law. In addition to this it should be remembered that any person who fails to produce a will for probate after reasonable notice may be committed to jail until he does so. Section 3282 of the Code. And further, that if any person wilfully suppresses or destroys a will with intent to injure or defraud any person, he may be imprisoned in the penitentiary for not more than seven years, or be fined not exceeding one thousand dollars and imprisoned in the county jail for not more than ment, 1913, page 56 hereof.

PROCEDURE.

Proceed to make the report as set forth under sec. 1481-a26, Supplement, 1913, page 56 hereof.

When No Administration Asked For—Administrator Appointed on Application of Treasurer of State—Non-resident Administrators or Executors to File Bond Before Appointed.—Sec. 1481-a3, Supplement, 1913. If upon the death of any person leaving an estate that may be liable to a tax under the provisions of this act, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the treasurer of state may, at any time thereafter, make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. When the heirs or per-

sons entitled to inherit the property of an estate subject to the tax hereby imposed, desire to avoid the appointment of an administrator as provided in this section, they or one of them shall, before the expiration of four months from the death of the decedent file under oath the inventories and reports and perform all the duties required by this act, of administrators, including the filing of the lien; proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this act in other cases. A non-resident of this state shall not be appointed as executor, administrator or trustee of any estate that may be subject to the tax imposed by this act, unless such non-resident first file a bond conditioned upon the payment of all tax, interest and costs for which the estate may be liable, such bond to be signed by not less than two resident freeholders or by an approved surety company and in an amount not less than twenty-five per cent (25%) of the total value of the estate, or of the property within this state if the estate is a foreign estate.

Where the treasurer of state makes application asking that the administrator be required to file an inventory of all personal property, etc., and a list of heirs and beneficiaries, and the administrator files a resistance to the application on the grounds that there are no persons interested in said estate subject to the tax, an order striking the resistance affects a substantial right from which an appeal will lie. Re Estate Stone, (1906) 132 Iowa 136; 109 NW. 455. The state must show that the estate is subject to the tax before it can compel the executor to file an inventory. Re Est. of Stone, *supra.*

PROCEDURE.

The following section of the Supplement, 1913, sets forth the facts that should be embodied in the report. A form for such a report is also given under annotations of the succeeding sections.

Clerk to Make Entry of Tax Lien—Report by Executors, etc., of Beneficiaries and Real Property Subject to Tax Within 30 Days—Sec. 1481-a26, Supplement, 1913. Upon the appointment and qualification of such executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

(1) Name and last residence of decedent.
(2) Date of death.
(3) Whether or not he left a will.

(4) Name and postoffice of executor, administrator or trustee.

(5) Name and postoffice of surviving wife or husband if any.

(6) If testate, name and postoffice of each beneficiary under will.

(7) Relationship of each beneficiary to the testator.

(8) If intestate, name and postoffice of each heir at law.

(9) Relationship of each heir at law to decedent.

(10) Inventory of all the real estate of the decedent giving amount and description of each tract.

(11) Whether the property passes in possession and enjoyment in fee for life or for a term of years.

Within thirty days after his qualification, each executor, administrator, and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax, it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and when said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien, no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. Upon the filing of such report, the clerk of the court shall immediately forward a true copy thereof to the treasurer of state.

(See also section 1468 of the Code, quoted on page 52 hereof.)

Failure to File Report—Effect—Failure to file a report may subject an executor's bondsmen to liability in case any one is injured by the omission. Not only that, but further, such executor may be removed from office for his failure to make such report, or to file the required inventories. See sec. 3416 of the Code. A proceeding to remove an executor or administrator may be commenced by the sureties on his bond,

creditors of the estate, heirs, legatees under a will or any other person who has a pecuniary interest in the proper administration of the estate. Ebersole's Encyclopedia of Iowa Law, sec. 1297.

The following citation from the supreme court of Pennsylvania illustrates further liability that may be incurred by failure to report.

PENNSYLVANIA.

One who purchases property and is given a deed of general warranty containing the words "Grant, bargain and sell" has a right to recover of the grantor's administrator such sum as he may be required to pay in settlement of a collateral inheritance tax lien upon land conveyed to him by the deed. Large v. McClain, (Pa.) 5 Cent. Rep. 761.

PROCEDURE.

The Treasurer of State recommends that those charged with the duty of reporting the names of the beneficiaries of an estate and the real property use the following form. The clerk of the district court should have a supply of these forms on hand but in event none can be obtained from that officer, they will be forwarded by the Treasurer of State on request. By filling this form out fully and completely much time and expense will be saved. *Do not list personal property in this report.* It is primarily intended to furnish the clerk with information of real property on which the tax is a lien so that he may enter it in the Collateral Inheritance Lien Record.

Form No. 1.

PRELIMINARY REPORT OF BENEFICIARIES AND REAL PROPERTY.

ESTATE OF..... Probate No.....

In the District Court of the State of Iowa, in and for ..... County.

(Note.—This report must be made within 30 days after appointment.)

In the Matter of the Estate of .....Deceased. } Preliminary Report of Beneficiaries, etc., and Real Property subject to Collateral Inheritance Taxation.

Comes now the above named { Executor / *Administrator* / Trustee } *and to the Court reports* as follows:

Name of Decedent	Last Residence	Date of Death	Testate or Intestate	

Name of Executor, Administrator or Trustee	P. O. Address	Name of Surviving Wife or Husband	P. O. Address

BENEFICIARIES

Names of Beneficiaries or Heirs at Law	Relationship to Decedent	P. O. Address	Remarks

INVENTORY OF REAL PROPERTY

(The Clerk should enter all land listed as being within his County in the Collateral Inheritance Tax Lien Record at once).

Description	Sec.	Twp.	Rng.	Lot	Block	REMARKS (See Instruction 1 on Back of this Blank)

ESTIMATE OF VALUE OF THE PERSONAL PROPERTY

I (or we) estimate the Gross Value of the Personal Property of this Estate at $.....

.....

Executor
Administrator
Trustee

STATE OF IOWA,
.....COUNTY. } *ss.:*

I, ..., being first duly sworn depose and say, that I am the above named { *Administrator and that I am acTrustee* *quainted with the facts and statements contained in the foregoing report and that they are correct and true to the best of my knowledge and belief.*

.....

Subscribed and sworn to by.....before me this..... day of ....., 19....

.....

Notary Public in and for said County

[SEAL]

INSTRUCTIONS.

Instruction 1. If any of the real property has been given to another for a term of years or for life, make a note of this fact in the column for "Remarks," stating whether for life or for years. Put this notation immediately after description of real property thus conveyed.

Instruction 2. The clerk should send a certified copy of this report to the Treasurer of State immediately after receiving the original into his hands.

Instruction 3. Executors, etc., must make this report within 30 days after appointment.

Instruction 4. Do not list personal property in this report.

Instruction 5. Make your report complete.

CERTIFICATE TO TREASURER OF STATE

See Instruction No. 2.

STATE OF IOWA,
.....COUNTY. } *ss.:*

I, ..., Clerk of the District Court in and for said county, do hereby certify that the within instrument is a true and complete copy of the Inventory made by the { *Trustee* / *Administrator in the* / *Executor*

Estate of .....

Dated this .....day of.....19....

.....
Clerk of said District Court.

Duty of Clerk to Report Estate Subject to Tax—Fees for Reporting.—Sec. 1481-a31, Supplement, 1913. It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county has, since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed or other method of conveyance, made in anticipation of or intended to take effect, in possession or in enjoyment after the death of the testator, donor or grantor, to any person other than to or for the use of the persons, societies, or organizations exempt from the tax hereby imposed, he shall make report thereof in writing to the treasurer of state, em-

bodying in such report such information as he may be able to obtain as to the name and residence of decedent, date of death, name and address of administrator, executor, or trustee, the description of any property liable to said tax and the county in which it is located and name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith enter the estate and report the same substantially as above indicated. For reporting such estates or property the clerk shall receive a compensation of one dollar ($1.00) for each one hundred dollars ($100.00) or fraction thereof of tax paid, but not to exceed the sum of five dollars ($5.00) in any one estate, the same to be in addition to the compensation now allowed him by law. Except when this information has first been received from another source, the treasurer of state, when he has issued his receipt for the tax in such estate, shall certify to the auditor of state the amount due the clerk for such service and the auditor of state shall issue his warrant on the treasurer of state in favor of said clerk for the sum due as herein provided.

Treasurer of State to Keep Record of Estates.—Sec. 1481-a46, Supplement, 1913. The treasurer of state shall record in a book kept in his office for that purpose, all estates reported to him as liable for a tax under the provisions of this act, showing,—

1. The name of the decedent.
2. The place of his residence or county from which such estate was reported.
3. The date of his death.
4. The name of the administrator, executor or trustee.
5. The appraised value of the property, or the value of any taxable pecuniary legacy.
6. The amount of indebtedness that was deducted before estimating the tax.
7. The amount of tax collected.
8. The amount of fees paid for reporting and collecting such tax.
9. The amount of tax, if any, refunded.

He shall also keep a separate record of any deferred estate upon which the tax due is not paid within eighteen (18) months

from the death of the decedent, showing substantially the same facts as is required in other cases, and also showing,—

a. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

b. The name of the person beneficially entitled to such estate or interest, with place of residence.

c. A description of the property or a statement of conditions upon which such deferred estate is based or limited.

Appraisers—Appointment of—Term of Office—Vacancies—Removal of—After an inventory of property subject to the collateral inheritance tax is filed with the clerk, steps should be taken to have a valuation made of the property in order to determine the amount of the tax to be paid. The statute provides for the appointment of three appraisers who are charged with the duty of faithfully and impartially estimating the value of the property. The section of the statute is as follows:

Sec. 1481-a4, Supplement, 1913. In each county, the court shall annually at the first term of the court therein appoint three competent residents and freeholders of said county, to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with the collateral inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term, shall be filled by the appointment of the court or by a judge in vacation. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate.

Issuance of Commission to the Appraisers—Before the appraisers may proceed to place an estimate upon the value of the property in the inventory, it is necessary that a commission be issued to them by the clerk of the district court directing and authorizing them to act. Without such a commission they have no authority to place an estimate upon the value of the property regardless of the fact that they may be duly appointed by the district court to act as appraisers for that county. The statute provides:

Sec. 1481-a5, Supplement, 1913. Whenever it appears that an estate or any property or interest therein is or may be subject to the tax imposed by this act, the clerk shall issue a commission

to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to such tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue such commission until the determination of such prior estate, except at the request of parties in interest who desire to remove the lien thereon.

The commission issued to the appraisers should be in substantially the form set forth on page 71 hereof. It is usually combined with the Appraisement Bill. The Appraisement Bill should contain a certified list of the assets of the estate to be appraised. *If only specific property is bequeathed to collateral heirs, and the rest of the estate goes to persons exempt from the tax, all the appraisers need to consider is the specific bequests subject to the tax.* The appraisal of property passing to persons exempt from the tax serves no useful purpose whatsoever.

What the Appraisers Must do After Receiving Commission to Appraise—Notice of the Time and Place of Appraisement—After receiving the commission to appraise the appraisers must prepare a Notice of the Time and Place of Appraisement and see that the Treasurer of State and all others known to have an interest in the estate are served with this notice. All the necessary forms are set forth in this compilation. The statute states the duties of the appraisers as follows:

Duty of Appraisers—Service of Notice—Return of Service—Notice of Appraisement—Sec. 1481-a6, Supplement, 1913. It shall be the duty of all appraisers appointed under the provisions of this act, upon receiving a commission as herein provided, to forthwith give notice to the treasurer of state and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, and if not practicable to serve the notice provided for by statute, they shall apply to the court or a judge thereof in vacation for an order as to notice and upon service of such notice and the making of such appraisement, the said notice, return thereon and appraisement shall be filed with the clerk, and a copy of such appraisement shall at once be filed by the clerk with the treasurer of state. When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole estate, or those of the several counties may serve for the property within their respective counties or other appraisers be appointed as the district court if in session, or judge thereof in vacation may direct.

Service of the Notice of Time and Place of Appraisement Absolutely Necessary—If the Treasurer of State is not notified of appraisement proceedings he may thereafter file application to set the appraisement aside and ask that another one be made. In Re Estate of McGhee v. State, (1898) 105 Iowa 9; 74 NW. 695.

If an heir is not served with this notice he would be entitled to have the appraisement proceedings set aside just the same as the state has. It is therefore absolutely necessary that this notice be served upon all known to have an interest in the estate. County attorneys, clerks, appraisers and all others seeking to enforce the collection of this tax should bear this in mind and see to it that proper notice is given and a return of service not only made but also filed in the office of the clerk. All the necessary forms for effectually carrying out the provisions of this section are given in this compilation, see page 65 hereof.

Every officer or person charged with the duty of collecting inheritance tax should remember that if there are minors, insane or incompetent heirs that the ordinary Notice of the Time and Place of Appraisement will not confer jurisdiction upon the appraisers to proceed with the appraisement. *In such cases guardians must be appointed to object to the appraisement for those legally incompetent.* Great care should be exercised in such cases in obtaining service of the Notice. Consult the county attorney, or the attorney representing the Treasurer of State in all such matters and abide by his advice.

In General—As to Appraisers—As to Value—As previously noted, the purpose of having appraisers is to ascertain the value of the property in order to determine the amount of tax to be paid upon succession to the property. In case the legacy is in the form of a definite sum of money, there is no need of the appraisers taking any action. See further upon this question section 1481-a9, Supplement, 1913, set forth at page 76 hereof.

The statute provides, "no person interested in any manner in the estate to be appraised may serve as an appraiser of such an estate." In an early case in this state (1874), our supreme court announced the doctrine that in the absence of anything to manifest a contrary intention that it must be presumed that whenever provision is made for appraisers that such persons are to be "disinterested", "impartial", or "indifferent". Pool v. Hennessy, (1874) 39 Iowa 192; 18 Am. Rep. 44. The thought being that one having an interest in any manner in the property would not be competent to act as a disinterested appraiser. If any appraiser has an interest in an estate, in any manner, he should notify the court and have another appointed in his place.

To appraise property is to estimate its value. Vincent v. German Insurance Co., (1903) 120 Iowa 272; 94 NW. 458. By use of the term "value," it has been held, in a case relating to collateral inheritance, when taken into consideration with the term, "appraised value," "actual market value", and the word "value" without any qualification that it was intended to mean the *fair market value.* Our court has stated, "There is nothing in any part of the act to indicate that the general assembly intended to have the value of the property, as fixed by assessors

and equalizing boards, considered for any purpose. The appraisement is to be made by appraisers, and is subject to the approval of the court. When the word "value" is applied to property, and no qualification is expressed or implied, *it means the price which the property will command in the market.* 28 Am. & Eng. Enc. Law, 46." Re Estate of McGhee, (1898) 105 Iowa 9; 74 NW. 695.

NEW YORK.

An appraiser is an officer of court and in some respects acts in a judicial capacity as well as ministerial. In New York he is held to have power to issue subpoenas and compel witnesses to appear for examination, and rule on the admission of testimony presented before him. See Gleason and Otis on "Inheritance Taxation," page 380.

If it is necessary to take the deposition of a non-resident to ascertain whether the succession to certain property is subject to the tax, a surrogate's court has authority to issue the commission to take the testimony of such non-resident witness. Re Wallace, 71 App. Div. 284. Further, if a witness refuses to answer a material question as to facts relative to an estate, or as to circumstances of the gift made by testator during his life time, such witness may be punished for contempt. Matter of Kennedy, 113 App. Div. 4.

Procedure When the Value of the Assets of an Estate is Doubtful—There are no cases upon this subject in Iowa. However the usual rule is to apply for additional time in which to file an inventory of such assets and thus the appraisement is delayed. The wisdom of such procedure is illustrated in the citation from New York.

Where the assets of an estate consist of rights or property. the value of which is not easily ascertained, such as patents, copyrights, etc., the Treasurer of State should be consulted before appraisement. In such cases it would probably be to the best interest of all concerned for the appraisers to consult experts in fixing the value of the property.

NEW YORK.

If the value of part of the assets of an estate cannot be determined at the time of the regular appraisement, such assets should be excluded from the valuation and reserved for future appraisement. It was so held in the Matter of Westum, (1897) 152 N. Y. 93, where it was shown that the administrator had brought action to collect a note and that the debtor claimed payment had been previously made, and the matter was thus pending at the time of the regular appraisement.

Procedure—When the Property to be Appraised is Subject to a Mortgage—This question has never been passed upon by our supreme court, but the Treasurer of State follows the general rule as recognized in Massachusetts and New York when the property is appraised at its actual value, less the encumbrance upon it. Or in other words, it is the equity which the decedent possessed in the property that is to be appraised and the tax is to be computed upon the value of this equity, rather than upon the value of the property itself.

See page 51 hereof for citations from Massachusetts and New York.

"Good Will"—When it Should be Considered as an Asset in Making Appraisement—"Good will" has been frequently defined as "the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein, in consequence of the general public patronage and encouragement, which it receives from constant or habitual customers on account of its local position or common celebrity." Millspaugh Laundry Co. v. Sioux City National Bank, (1903) 120 Iowa 1; 94 NW. 262; 20 Cyc. 1275. More briefly stated it is the favor which the management of a business wins from the public by years of hard work and fair business dealing, and the presumption that old patrons will continue to deal at the same place although under new management. As a rule "good will" is not to be considered of value except when taken in connection with tangible property. A dealer in merchandise may have acquired the "good will" of the public through his fair dealings and there attaches to his place of business and to his name this intangible asset termed "good will". Its value is to be determined according to the circumstances of each case and should be considered by appraisers in fixing the value of property for the purpose of arriving at the collateral inheritance tax.

"Good will" is not to be considered in appraising the value of a company, such as a gas plant where it is the only concern of its kind in the vicinity and hence has a monopoly on the business. Des Moines Gas Co. v. Des Moines, 199 Fed. 204; Cedar Rapids Gaslight Co. v. City of Cedar Rapids, (1909) 144 Iowa 426; 120 NW. 966; 48 L. R. A. (ns) 1025; Willcox v. Consolidated Gas Co., 212 U. S. 19; 53 L. Ed. 382; 29 Sup. Ct. Rep. 192; 48 L. R A (ns) 1134.

NEW YORK.

The "good-will" of a business is held taxable in this state. In the Matter of Dun, 40 Misc. Rep. 509; 82 N. Y. Sup. 802, an appraisement of the "good-will of the business of the firm of R. G. Dun & Company" at the sum of $2,000,000.00 was sustained.

In estimating the value of good will the courts of New York have followed an interesting method which is well illustrated in the Matter of Keahon, 60 Misc. 508, 113 N. Y. Sup. 926, when it was shown that the decedent had been in business for fifteen years. At the time of his death the net capital of his business was approximately $30,700.00 and his annual profits were $26,679.00. The court multiplied the net profits by three in estimating the value of the "good will" of the business.

In another case the value of the "good will" of a confectionery business was held to be six times the annual profits. Van Au v. Magerheimer, 126 Misc. 257-270.

The approved rule in New York is usually to appraise the "good will" of a business from three to five times the annual profits, according to the length of time the decedent conducted his business.

PROCEDURE

Form of Notice of Appraisement—Notice by Publication, etc.—The preceding section of the statute provides for the service of the Notice

of the Time and Place of Appraisement upon the Treasurer of State and upon all others known to have an interest in the estate. There are a number of methods of serving this notice, several of which are set forth in this compilation. So far as the Treasurer of State is concerned, he stands ready and willing to acknowledge or accept service of such a notice. By so doing the estate may avoid the expense of obtaining personal service. The Treasurer of State recommends that this method be exclusively used in notifying him of appraisement proceedings. The Treasurer should be given this sort of notice even when it is necessary to obtain service by publication on others known to be interested in the estate.

The notice may be in substantially the following form:

Form No. 2.

NOTICE OF THE TIME AND PLACE OF APPRAISEMENT.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased.	Probate No..... Notice of the Time and Place of Appraisement.

To E. H. Hoyt, Treasurer of the State of Iowa, and to ..... (name all persons known to have an interest in the estate such as heirs, legatees, charitable corporations, etc.).

You and each of you are hereby notified that the undersigned, the duly appointed and qualified appraisers for said county of property charged or sought to be charged with the payment of a Collateral Inheritance Tax, will at ..... o'clock, ...M., on the ..... day of ....., 19...., at ..... (name the place) ....., in the County of ....., State of Iowa, proceed to appraise the real and personal property of the Estate of the said decedent subject to the Collateral Inheritance Tax in the form and manner provided by law.

You are further notified that you may appear at said time and place and be heard as to the appraisement of said property or any portion thereof.

Therefore take notice of this proceeding and govern yourselves accordingly.

Dated this ..... day of....., 19.....

.....

.....

.....

Appraisers.

It is necessary that the appraisers show the court how they served the notice, or caused it to be served. This showing is usually called a "return of service." When the notice has been served by the sheriff upon the person himself, the following form may be used:

Form No. 3.

RETURN OF PERSONAL SERVICE.

State of Iowa, }
..... County. } ss.

I, ..., sheriff of.....county, State of Iowa, hereby certify that I received the within (or annexed) Notice of the Time and Place of Appraisement for service on the ..... day of ....., 19...., and that on the ..... day of ....., 19....., at .....Township, in said county, I served the same personally on..... (name person)—by reading said Notice to him (or offering to read it to him, he refusing to hear it read) and by delivering to him personally a true copy of said notice (or offering to deliver to him a true copy of said notice, he refusing to receive the same).

Dated this ..... day of ....., 19.....

.....
Sheriff of said County.

Fees $.....

By .....
Deputy Sheriff of said County.

If the notice is served by any person other than the sheriff or his deputy, the return of service must be made under oath. The following may be used as a guide in such a case:

Form No. 4.

RETURN OF PERSONAL SERVICE.

State of Iowa, }
..... County. } ss.

I, ..., being first duly sworn depose and say that I received the within (or annexed) Notice of the Time and Place of Appraisement for service on the ..... day of ....., 19...., (proceed from here as in foregoing form except as to signature).

.....
(Signature)

Subscribed and sworn to by.....before me this ..... day of ....., 19.....

Notary Public in and for
(Seal) said County.

Many times all those named in the notice are willing to accept service and thus save the cost of having a sheriff serve them. The Treasurer of State should be served in this manner as he is always willing to accept service. In event the service is accepted it should be in substantially the following form:

Form No. 5.

ACKNOWLEDGMENT OF SERVICE.

State of Iowa, }
..... County. } ss.

As one of the persons named in the foregoing Notice of the Time and Place of Appraisement, I hereby acknowledge due and legal service of the said Notice at ..... Township,..... County, Iowa, on this ..... day of ....., 19.....

.....
(Signature)

It sometimes happens that it is difficult, or impossible, to obtain personal service upon one or more of the persons named in the Notice yet it is possible to get service upon some member of his, or her, family over fourteen years of age. Service upon such a person may be made and when made is just as effective in the eyes of the law as personal service upon the real party in interest. The return in such cases should be substantially as follows:

Form No. 6.

RETURN FOR SUBSTITUTED SERVICE.

State of Iowa, }
..... County. } ss.

I, ..., sheriff of..... county, State of Iowa, hereby certify that I received the within (or annexed) Notice of the Time and Place of Appraisement for service on the ..... day of ....., 19...., and that I served the same on the ..... day of ....., 19...., upon ..... (name the real party in interest) by leaving a copy thereof at the dwelling house of the said..... (name the real party in interest) ..... in .....Township, in the county aforesaid, that being his usual place of residence, with ..... (name the person to whom you delivered the copy)....., the son (or wife, or daughter as the facts may be) of the said..... (name the real party in interest).....,

he (or she) being a member of said.....(name the real party in interest).....family, over fourteen years of age; the said.....(name the real party in interest) .....not being found in said county.

Dated this..... day of .....,19.....

.....
Sheriff of said County.

No. 4.

By .....
Deputy Sheriff of said County.

In event the person who serves the notice is not the sheriff, or his deputy, the return should be made under oath as set forth in Form No. 4.

Then again it frequently happens that the heirs or legatees are domiciled in a foreign country or cannot be located within the State and it is thus impossible to obtain personal service of the Notice of the Time and Place of Appraisement upon them. In such a case it is necessary to obtain service by "publication," that is, publish the notice once each week for four consecutive weeks in some newspaper of general circulation within the county. In event it is necessary to do so an application must be made to the court stating the facts and asking for authority to obtain service by publication. The application should be in substantially the following form:

Form No. 7.

APPLICATION FOR ORDER TO SERVE NOTICE OF APPRAISEMENT BY PUBLICATION.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased.	Probate No..... Application for Order to Serve Notice of Appraisement by Publication.

Comes now the undersigned, the duly appointed and qualified appraisers of property charged or sought to be charged with the payment of the Collateral Inheritance Tax, and to the court states:

That the beneficiaries of the Estate of....., deceased, all reside in the City of Paris, France, (or state the facts as they exist).

That it is not practical to obtain personal service of the Notice of the Time and Place of Appraisement upon said beneficiaries as provided for by statute, and,

Therefore these appraisers respectfully ask that an order be entered authorizing these appraisers to serve the Notice of the Time and Place of Appraisement upon the said beneficiaries by publication, and that the

aforesaid Notice be published in the.....

(name the newspaper)..... for the time and in the manner required by law in such cases.

Dated this ..... day of ....., 19.....

.....

.....

.....

Appraisers.

Subscribed and sworn to by....., ...,

and ..... before me this ..... day of .....,

19.....

.....

Notary Public in and for

..... County, Iowa.

(Seal)

If the court, after inspection of the application, finds the facts sufficient to warrant service of the notice by publication, he may enter an order in substantially the following form thereby authorizing the publication of the notice.

Form No. 8.

ORDER FOR SERVICE OF NOTICE OF APPRAISEMENT BY PUBLICATION.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased.	Probate No..... Order for the Service of Notice of Appraisement by Publication.

BE IT REMEMBERED that on this ..... day of ....., 19...., comes on for hearing the application of the Collateral Inheritance Tax appraisers in the Matter of the Estate of....., deceased, asking for authority to serve Notice of the Time and Place of Appraisement by publication.

The court being fully advised in the premises finds that the said application should be granted as prayed for.

IT IS THEREFORE ordered and decreed that the Notice of the Time and Place of Appraisement of the property of said Estate be made by publication in the..... (name the newspaper) ..... published at..... (name the place) ..... in said county and State, once each week for four consecutive weeks.

.....

Judge.

After the granting of this order the appraisers should proceed to publish the Notice of the Time and Place of Appraisement as directed in the order of the court. The Notice should be substantially the same as Form No. 2, page 65 hereof.

It is just as necessary that a return of service be made when the notice is served by publication as when it is served in any other manner. But the method of making the return is entirely different. In such cases it is made by the publisher of the newspaper or his foreman. It should be in substantially the following form:

Form No. 9.

AFFIDAVIT OF PUBLICATION OF NOTICE OF APPRAISEMENT.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased. } Probate No.....

Affidavit of Publication of Notice of Appraisement.

State of Iowa, ... County. } ss.

I, ..., being first duly sworn depose and say that I am the publisher (or foreman) of the.....(name the paper) ....., a weekly (or semi-weekly or daily) newspaper, printed at.....(name the place)....., in ..... county, Iowa, and that the annexed printed Notice of the Time and Place of Appraisement in the Matter of said Estate was published in said newspaper for four consecutive weeks; the date of the first publication being on the ..... day of ....., 19...., and the last publication being on the .....day of ....., 19.....

.....
(Signature)

Fees $.....

Subscribed and sworn to by.....
before me this.....day of ....., 19...

.....
Notary Public in and for said County.

(Seal)

It sometimes happens that some of the heirs are unknown and hence there is no way of obtaining service except by publication. In such a case application should be made to the court in the same manner as set forth in event some of the heirs are in a foreign land. The procedure will be the same in every respect except that the notice would of necessity be addressed as follows:

Form No. 10.

NOTICE OF THE TIME AND PLACE OF APPRAISEMENT.
(Unknown Claimants)

In the Matter of the Estate of ..... deceased. } Probate No. ..... Notice of the Time and Place of Appraisement.

To E. H. Hoyt, Treasurer of the State of Iowa, and to each and all of the Unknown Claimants of the property of..... deceased, more particularly described as consisting of (describe the personal property in a general way, but in case of real property give the official description) (Now proceed as in the usual notice, see Form No. 2, on page 65).

In case an heir is insane, or an inmate of an asylum, or a minor, the ordinary notice of appraisement will not be sufficient to confer jurisdiction upon the appraisers or court to proceed with the appraisement. The regular guardian of such person, or the guardian *ad litem*, must appear and defend for such incompetent or minor. In such cases the appraisers should consult the county attorney, or the attorney representing the Treasurer of State, and follow his directions.

When the appraisers have served the Notice of the Time and Place of Appraisement upon the Treasurer of State and upon all others known to have an interest in the estate, and have a return of service showing that notice has been given to each and every person known to be interested in the estate, the appraisers may then proceed to place an estimate upon the value of the property of the estate at the time and place stated in the notice.

The clerk of the district court should furnish the appraisers with a certified statement of all the assets of the estate inventoried by the executor, or administrator, and it is upon this list of property that the appraisers place their estimates of value. The Commission to Appraisers and the certified statement usually are printed upon one form which is called the Commission to Appraisers and the Appraisement Bill. It should be substantially as follows:

Form No. 11.

COMMISSION TO APPRAISERS. APPRAISEMENT BILL.
(Collateral Inheritance Taxation)

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR .....COUNTY.

In the Matter of the Estate of ..... Deceased. } Probate No. .....

COMMISSION TO APPRAISERS.

STATE OF IOWA, ...COUNTY. } ss.:

To....., ..., and ....., you, the appraisers of property charged or sought to be charged with the payment of a Collateral Inheritance Tax, are hereby commissioned to appraise the property of ...., deceased, late of .....county and State of....., which is subject to the aforesaid tax. You will, therefore, after having given not less than ten days' Notice of the Time and Place of Appraisement to the Treasurer of State and to all others knows to have an interest therein, as required by law, then proceed to make an appraisement of the property set out in the following inventory, and file with this court the said Notice with your return of service thereon, and your Appraisement Bill of said property, on or before the ..... day of .....19...

Witness my hand and official seal hereto affixed at ..... this .....day of....., A. D. 19...

.....

Clerk of said District Court.

INVENTORY AND APPRAISEMENT BILL.

REAL PROPERTY.

DESCRIPTION (See Instruetion No. 1	Sec.	Twp.	Rng.	Lot	Bloek	Aeres	Appraised Value (See Instruetion No. 2)		
Total Appraised Value of Real Property									

PERSONAL PROPERTY

DESCRIPTION (See Instruetion 1)	Appraised Value (See Instruction 2)			DESCRIPTION (See Instruetion 1)	Appraised Value (See Instruction 2)		
Amt. Carried Forward							
Total Appraised Value of Personal Property							

NOTES AND ACCOUNTS

By Whom Owing	Date of Note or Acct.	Rate of Int.	Face of Note or Aecount	Interest on to Date of Death	Appraised Value (See Instruction 1)
Total Appraised Value of Notes and Aeeounts					
Grand Total Appraised Value of Entire Estate					

TO THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR .....COUNTY.

We, the undersigned, being first duly sworn, depose and say that we are the duly appointed appraisers in the county and state aforesaid, of property charged or sought to be charged with the payment of the Collateral Inheritance Tax, and that we have faithfully and impartially, and without prejudice appraised the property set out in the foregoing inventory at what we believe to be its fair market value, as indicated in the column marked "Appraised Value."

Dated this.....day of....., 19...

1. No. days service..... 1. .....
2. No. days service..... 2. .....
3. No. days service..... 3. .....

Appraisers.

Subscribed and sworn to by the above named appraisers before me this .....day of....., 19...

.....
Clerk of said District Court.

CERTIFICATE TO TREASURER OF STATE.

(See Instruction 4.)

STATE OF IOWA, } ss.:
.....COUNTY. }

I, ..., Clerk of the District Court in and for said County, do hereby certify that the within instrument is a true and complete copy of the appraisement made by the inheritance tax appraisers in the Estate of .....

Dated this.....day of....., 19..

.....
Clerk of said District Court.

INSTRUCTIONS.

Instruction 1.

In the column designated "Description," in addition to the legal description, state the nature of the estate passing, for instance, "undivided one-half," "life estate," for "term of ten years," "remainder after life estate," or "in fee" as the case may be.

Instruction 2.

If the estate passing is less than in fee, as for instance, "life estate," etc., the appraisers should estimate the fair market value of the property just as if it had passed in fee. *Do not attempt to appraise the* **value of the life estate,** nor should you consider the fact that the es-

tate is less than in fee. After getting your estimate of the value of the property, **the Treasurer of State estimates the value of the life estate** by the use of the mortality tables.

Instruction 3.

If no objection is made to this report within twenty days after it is filed with the clerk, it shall stand as approved.

Instruction 4.

The Clerk of the District Court should forward a certified copy of this report to the Treasurer of State immediately after the original comes into his hands.

Time When Real Property Must be Appraised — Default in Payment of Tax.—Sec. 1469 of the Code. All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator or trustee, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable, shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement, unless a longer period is fixed by the court, and, in default thereof, the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold.

See also the following section wherein provision is made for the appraising of the property in case the executor or administrator fails to have the property appraised. The following provision was passed after the section of the Code above set forth and in case of a conflict the former should prevail. Edgar v. Greer, (1859) 8 Iowa 393a.

Time of Appraisement of Transferred Property—Appraised Value to be Market Value—Deduction of Debts.—Sec. 1481-a8, Supplement, 1913. Within ninety (90) days after the transfer of any property that may be liable for a tax under the provisions of this act, except as hereinotherwise provided, the clerk of the proper county upon his own motion or upon the application of the treasurer of state, county attorney, or person interested in the property, shall cause the property to be appraised as provided herein. If there be an estate or property subject to said tax wherein the records in the clerk's office do not disclose that there may be a tax due under the provisions of this act, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. The appraised value of the property shall in all cases be its market value in the ordinary course of trade, and in domestic estates

the tax shall be calculated thereon after deducting the debts as defined herein; provided, however, that the debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this act, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, then the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the treasurer of state.

See the preceding section of the Code and the notation thereunder.

When Personal Property Cannot Be Ascertained.—Time of Appraisement Extended.—Sec. 1481-a27, Supplement, 1913. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the collateral inheritance appraisement for a period not to exceed three months beyond the time fixed by this act.

There may be cases in which it is exceedingly difficult to make a full or complete list of the personal assets of an estate within the time allowed by law. In such cases additional time may be obtained in which to file the inventory. It should be remembered, however, that delay in filing the inventory, or in making the appraisement does not stop interest on the tax, if the tax is not paid within eighteen months from the date of the decedent's death.

PROCEDURE.

In case an administrator desires additional time in which to file his inventory, he should make an application to the court in substantially the following form:

Form No. 12.

APPLICATION FOR EXTENSION OF TIME TO FILE INVENTORY.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased.	Probate No. ..... Application for Extension of Time to File Inventory.

Comes now....., Administrator (or Executor) of the Estate of....., deceased and to the court states:

That the assets of said estate consist of numerous notes, bonds and book accounts and the complicated nature of the said estate is such that this administrator cannot at this time file a full, complete, and itemized inventory of the personal assets of said estate within the time allowed by statute. (If facts be different so state them.)

Therefore, this administrator prays that an order be granted extending the time for filing said inventory until the ..... day of ....., 19.....

.....
(Signature of Administrator.)

Subscribed and sworn to by.....before me this ..... day of ....., 19.....

.....
Notary Public in and for..... County.

The order granting the extension of time may be in substantially the following manner:

Form No. 13.

ORDER GRANTING EXTENSION OF TIME IN WHICH TO FILE INVENTORY.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

In the Matter of the Estate of ..... deceased. } Probate No..... Order Granting Extension of Time in Which to File Inventory.

BE IT REMEMBERED that on this..... day of....., 19...., comes on for hearing the application of....., Administrator (or Executor) of the Estate of....., deceased, wherein an extension of time is prayed for in which to file an inventory of the personal property of said estate.

The court being fully advised in the premises finds that said application should be granted as prayed for.

IT IS HEREBY ORDERED AND DECREED that the administrator of the above named estate be granted additional time in which to file an inventory of the personal property of said estate; that said administrator shall prepare and have on file the said inventory on or before the ..... day of ....., 19.....

.....
Judge.

Relief from Appraisement of Personal Property — When Granted—Procedure.—Sec. 1481-a9, Supplement, 1913. All es-

tates subject in whole or in part to the tax imposed by this act shall be appraised for the purpose of computing said tax by the regular collateral inheritance tax appraisers; provided, that estates liable for the payment of the inheritance tax upon specific legacies, annuities, bequests of money or other property the value of which may be determined without appraisement, and estates which consist of money, book accounts, bank deposits, notes, mortgages and bonds, need not be appraised by the collateral inheritance tax appraisers if the administrator, executor or trustee or the persons entitled to or claiming such property are willing to charge themselves with the full face value of such bequests or property, together with the interest, earnings or undivided profits which may be due on said properties, at the time of death of the testator or intestate, as the basis for the assessment of said tax, but in all cases the relief from appraisement for the collateral inheritance tax is dependent upon the consent of the treasurer of state, and the subsequent approval thereof by the court or judge thereof in vacation. In the event that the estate has been duly appraised under the ordinary statutes of inheritance or the property has been sold and such appraisement or selling price is accepted by the treasurer of state as satisfactory for collateral inheritance tax purposes, the court or judge thereof in vacation may, upon proper application, relieve the estate from the appraisement by the collateral inheritance tax appraisers; but in order to obtain such relief, the administrator, executor, trustee or other party interested must file an application for relief with the consent of the treasurer of state thereto in the office of the clerk of the court before said clerk issues a commission to the collateral inheritance tax appraisers. The court or judge thereof in vacation may, upon application of the representatives of the estate or parties interested, relieve the estate of the appraisement for collateral inheritance tax purposes if it be shown to said court that the market value of the entire estate will not exceed one thousand dollars; provided, that prior to the application to said court or judge the written consent of the treasurer of state to such relief is procured. In all cases where an estate is relieved from an appraisement for collateral inheritance tax purposes, the order granting relief shall be recorded in the clerk's office, and the fact of such relief and reasons therefor shall be duly noted in the decree or order of final settlement made by the court.

In case a foreign estate desires to be relieved from having its property appraised in the State of Iowa a different form of procedure should be followed. See page 95 hereof. It should be remembered that real property must always be appraised regardless of whether the estate is a domestic estate or a foreign one; the Treasurer makes no exceptions to this rule.

PROCEDURE.

It frequently happens that the personal property is of such a character that its value may be ascertained without the aid of appraisers. In such a case the administrator, or executor, may make application to be relieved of the necessity of having an appraisement made. This application should be as follows:

Form No. 14.

APPLICATION FOR RELIEF FROM APPRAISEMENT.

To the Treasurer of State, Des Moines, Iowa:

The Estate of ....., late of ..... County.....for which I act as..... is subject to the tax imposed upon Collateral Inheritances by the State of Iowa.

I respectfully ask your consent to the relief of this estate from the regular appraisement in the assessment of said tax, for the reasons that,

.....

.....

.....

Total value of described property .....$————————

And (name the person) is willing to charge ..self with the full face of such bequest or property, together with the interest, earnings, or undivided profits which was due on said property, at the time of death of the testator or intestate, as the basis for assessment of said tax.

.....
Administrator
Executor
Trustee

STATE OF IOWA, }
.....COUNTY. } ss.:

I, ..., being duly sworn, upon my oath do declare the foregoing statements to be true, the same to be in my best judgment sufficient to warrant the relief of the estate aforesaid from appraisement.

.....

Subscribed and sworn to before me, and in my presence by said ..... on this.....day of.....19..

.....
Notary Public in and for.....County.

I, ..., Clerk of the Court of ..... County, Iowa, do hereby certify that the foregoing statements of..... ..... of the estate of .....are correct as shown by the records of my office.

Witness my hand and seal this.....day of.....19...

.....
Clerk of Court.

To the Treasurer of State, Des Moines, Iowa:

I have personally examined into the condition of the estate of.....

..... late of..... County, and it is my opinion that the foregoing statements of the.....are correct and the reasons given sufficient to warrant your consent to the relief of the estate from the appraisement required for the assessment of the collateral inheritance tax.

.....
County Attorney.

TREASURER OF STATE'S CONSENT TO RELIEF FROM APPRAISEMENT.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR

.....COUNTY.

In the Matter of the Estate of..... Deceased. } ss.:

To the District Court of said County:

The estate of ....., late of.....county now in the course of administration in probate in your court passes in some part to collateral beneficiaries and is therefore subject to the provisions of law imposing a tax upon collateral inheritances or transfers.

From the sworn statement of the.....of said estate as hereinafter found and made a part hereof, it appears that the liability of the estate of the decedent aforesaid for the collateral inheritance tax and the exact amount of said tax can be determined without resort to the regular proceedings for the appraisement of the property comprising the estate, and being advised that the collateral inheritance tax can be fully determined without an appraisement without detriment to the state's interest.

Therefore, I, ..., Treasurer of the State of Iowa, do hereby consent to the relief of the estate of the decedent aforesaid from the regular appraisement required under the provisions of the statutes assessing the collateral inheritance tax.

Signed this.....day of....., 19.., at Des Moines, Iowa.

.....
Treasurer of State.

By.....
Deputy.

ORDER OF THE COURT GRANTING RELIEF.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR .....COUNTY.

Now on this.....day of.....19.., the within application coming on for hearing and it appearing from the statements contained in the said application that the inheritance tax can be determined without resort to an appraisement of the property of the aforesaid estate, it is hereby orderd that, for the reasons stated in the within application, the estate of.....be, and the same is hereby relieved from appraisement as required by law for assessment of an inheritance tax.

.....

Judge of the.....Judicial District.

INSTRUCTIONS.

No. 1. Make this application in duplicate and mail both copies to the Treasurer of State, Des Moines, Iowa.

No. 2. If relief from an appraisement is made, it answers the purpose of an appraisement of the property. In making the application be sure to state fully your reasons justifying the relief asked for. A list of the property and its value must be given. If part of the property of the estate has been specifically bequeathed to persons exempt from the imposition of the collateral inheritance tax, do not list such property in this application.

Objections to Appraisement—When Filed—Appraisement Approved or Set Aside—Appeal.—Sec. 1481-a7, Supplement, 1913. The treasurer of state or any person interested in the estate or property appraised, may, within twenty (20) days thereafter, file objections to said appraisement and give notice thereof as in beginning civil actions, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers and so proceed until a fair and good appraisement of the property is made at its value in the market in the ordinary course of trade. The treasurer of state or any one interested in the property appraised, may appeal to the supreme court from the order

of the district court approving or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal the appellant, if he is not the treasurer of state, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. If upon the hearing of objections to the appraisement, the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty (20) days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved.

PROCEDURE.

The following form has been prepared on the assumption that the Treasurer of State is objecting to the appraisement. This form may be so modified as to serve as a guide in any other case. Usually such matters may be heard in the probate court where administration is pending.

Form No. 15.

PETITION OBJECTING TO COLLATERAL INHERITANCE APPRAISEMENT

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR

..... COUNTY.

.....Term, A. D. 19....

In the Matter of the Estate of ..... deceased.	Probate No..... Petition Objecting to Collateral Inheritance Appraisement.

Comes now E. H. Hoyt, as Treasurer of the State of Iowa, and objects to the collateral inheritance appraisement made in the above entitled estate, and as grounds therefor to the court states:

That the duly appointed appraisers of property charged or sought to be charged with the payment of the collateral inheritance tax for said county, filed with the clerk of the district court of said county on the ..... day of ....., 19...., their report wherein it appears that said appraisers proceeded to appraise the following described real property, to wit:—(Describe it).

That the appraisers aforesaid appraised the above described property, as shown by their report, at ..... dollars per acre, totaling in value the sum of ..... dollars.

That said property was and is fairly and reasonably worth the sum of .....dollars per acre on the market in the ordinary course of trade; that the total value of said real property is fairly and reasonably worth the sum of ..... dollars.

That the appraised value of said real property, as fixed by the duly appointed appraisers, has not been fairly or in good faith made; that it has not been made with any fair regard as to the reasonable value of said real property; that to allow said appraisement to stand as a fair valuation of said property will permit the beneficiaries thereof to avoid the payment of a fair and equitable tax on their right of succession to said property; and that the State of Iowa will suffer therefrom.

Wherefore the petitioner prays that an order be made and entered of record setting aside the said appraisement, and that the appraisement be held as naught; and that three new and disinterested appraisers be appointed to proceed to make a fair and reasonable appraisal of said property as provided by law, to the end that equity and justice may be done in the premises; the petitioner further prays for such other and further relief as to the court may be deemed equitable, and for the costs of this action.

.....
Attorneys for Treasurer of State.

(Add usual verification)

The foregoing section is silent as to the time and place of hearing of the petition objecting to the appraisement. However, since it is to the interest of all concerned that a speedy disposition be made of such matters, it is well to have the court fix the time and place of hearing by making an order substantially as set forth in Form No. 21. on page 103 hereof. A reasonable time (at least two weeks) should be given all parties in which to prepare for the hearing.

The notice of the filing of the petition objecting to the appraisement should be substantially as an original notice and served in the same manner. If the court has, by order, fixed a time and place of hearing, then the notice should set forth this fact so that those served with the notice may have opportunity to appear and show cause why the petition should be denied.

Sec. 1481-a20, Supplement, 1913, probably grants authority to a court to make any order necessary in relation to the assessment, collection, and the hearing of matters relating to inheritance taxation.

The Rule Where the Assets of an Estate are Lost During Administration—The Treasurer of State adheres to the rule that the appraised value of the property is the basis of determining the amount of the inheritance tax regardless of subsequent increase, or decrease, in value of the assets of the estate. This is the general rule of the several states. The cases cited below illustrate two phases of this question.

CALIFORNIA.

In the case of Re Hite, 159 Cal. 392; 113 Pac. 1072; 32 L. R. A. (ns) 1167, the executor, through misappropriation of funds caused a loss to the estate of nearly $99,000.00 and the administrator subsequently appointed sought to have this sum deducted in determining the value of the estate for inheritance tax purposes. This relief was denied, the court holding that the tax is to be assessed on the value of the property at the time of the death of the testator, or intestate, and that subsequent appreciation or depreciation in value is immaterial. It further held that the state was in no way legally responsible for any act of an executor or administrator causing such loss or destruction, and the beneficiary's loss in such a case is simply the character of loss that accrues to any owner of property lost or destroyed. Further, that whenever property actually vests in the beneficiary under the terms of a will, he receives it within the meaning of those decisions which declare that the amount of the tax is measured by the sum or property received by the legatee.

NEW YORK.

Where the estate shrinks through the destruction of the property or the assets are obliterated of all value during the process of administration, without fault or delinquency on the part of the executor, it has been held in New York that he is entitled to a discharge even though the tax has not been paid where the assets of the estate are insufficient to meet the costs of administration. Re Meyer, 209 N. Y. 386; 103 NE. 713; L. R. A. 1915C, 615. It ought to be further stated that the loss of the property in this case was not due to any fault of the beneficiary, unless failure to redeem property sold under a foreclosure proceeding can be termed such where there were no funds with which to redeem.

Taxes Due from Devisees, Grantees, etc.—How Paid—Suit for Collection. Sec. 1481-a17, Supplement, 1913. It is hereby made the duty of all executors, administrators, trustees, or other persons charged with the management or settlement of any estate subject to the tax provided for in this act, to collect and pay to the treasurer of state the amount of the tax due from any devisee, grantee, donee, heir or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate in which cases the treasurer of state shall collect the same. Executors, administrators, trustees, or the state treasurer, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. The treasurer of state may bring, or cause to be brought in his name of office, suit, for the collection of said tax, interest and costs, against the executor, administrator, or trustee, or against the

person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit. If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest and costs.

The discharge of an executor before payment of the tax does not relieve the person or property from the payment of the same. See page 120 hereof.

Delay on the Part of the State in Asserting its Right to Levy the Inheritance Tax—Effect—There are no Iowa cases upon this point, but the general rule has been well stated to be, "that no laches is to be imputed to the state and against her; that no time runs so as to bar her rights." Josselyn v. Stone, 28 Miss. 753. This is the rule in the absence of an express statute limiting the state in its right to maintain an action for the collection of the inheritance tax. The reasoning of the following cases, and the soundness of the holdings cannot be doubted. The decisions of the Massachusetts court are of special interest as the statutes of that state contain provisions in accord with the statutes of this state. The Treasurer of State follows the rule of Massachusetts.

KANSAS.

The supreme court of Kansas has well stated the rule to be that statutory limitations do not run against the state when it sues in its sovereign capacity, unless the statute expressly includes the state or the legislative intention to include it is shown by the clearest implication. State v. Dixon, 90 Kans. 594; 135 Pac. 568; 47 L. R. A. (ns) 905.

Following this rule, the Kansas court has held that no inaction, procrastination, or delay on the part of the public officers will prevent the state from collecting its inheritance tax. State v. Nagle, 100 Kans. 495; 164 Pac. 1073; L. R. A. 1917E, 1160. The court adheres, in part, to the reasoning of the Massachusetts court in the case of Howe v. Howe. *infra*, where it is stated that the fact that there is no discharge of an executor until the tax is paid discloses an intention on the part of the legislature to preserve the lien of the tax until payment is actually made.

MASSACHUSETTS.

In the case of Howe v. Howe, 179 Mass. 546; 61 NE. 225; 55 L. R. A. 626, it was held that in view of the provisions of the statute of Massachusetts providing, (1) that administrators, executors, and trustees were liable for the inheritance tax, with interest until paid, and (2) that the

tax was to be a lien on all property subject to the tax until paid, (3) that legacies chargeable upon real estate were subject to the tax and that the state had a lien on this real estate until the legacy was paid, and (4) that no final settlement with an executor or administrator was to be made until the tax was paid, that the statute of limitations would not bar the collection of this tax regardless of the length of time intervening between the accruing of the tax and the attempt of the state to assert its right thereto. This was the holding even though the statute provided that the treasurer shall bring suit within two years and six months after the executors and trustees file their bond. In short, the court held that nothing less than the payment of the tax itself will prevent the state from collecting the tax.

NEW YORK.

An affirmative statute of New York on the limitation of time affecting actions for the collection of the inheritance tax provides as follows: "The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, *provided*, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual." Sec. 245, Tax Laws of the State of New York, 1917.

UNITED STATES.

Mr. Justice Story, speaking in behalf of the supreme court in the early case of United States v. Kirkpatrick, 9 Wheat 724; 6 L. Ed. 200, 203, in considering a defense urged that sureties on the official bond of a federal revenue collector were discharged because of delay in bringing action on the bond stated, "Then, as to the point of laches, we are of the opinion that the charge of the court below, which supposes that laches will discharge the bond, cannot be maintained as law. The general principal is that laches is not imputable to the government; and this maxim is founded not in the notion of extraordinary prerogative but upon a great public policy. The government can transact its business only through its agents; and its fiscal operations are so various, and its agencies so numerous and scattered that the utmost vigilance would not save the public from the most serious losses if the doctrine of laches can be applied to its transaction. * * * Without going more at large into this question, we are of the opinion that mere laches of public officers constitutes no ground of discharge in the present case."

Nature of Action to Collect Tax—The proceeding to collect the inheritance tax is not an equitable action. Re Lamb, 140 Iowa 89; 117 NW. 1118; 18 L. R. A. (ns) 226. Such proceedings should conform as nearly as may be to those for the collection of ordinary debts, which would be a law action.

PROCEDURE.

The original notice in such cases should follow the same form as in ordinary actions. The plaintiff should be the Treasurer of State in the name of his office. The petition should be in substantially the following form:

Form No. 16.

PETITION FOR COLLECTION OF TAX.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

..... Term, A. D. 19....

E. H. Hoyt, as Treasurer of the State of Iowa, Plaintiff,

vs.

X, as administrator of the Estate of Z, deceased, and B. K. and L. K., Defendants.

Law No. .....
Petition at Law.

The plaintiff for a cause of action against the defendants, states, that the plaintiff is the Treasurer of the State of Iowa and authorized by virtue of law to bring this action in the name of his office.

That the defendant X is the duly appointed and qualified administrator of the Estate of Z, deceased, and that B. K. and L. K. are the sole and only heirs of said decedent.

That on or about the .....day of....., the said Z, died intestate at..... in the county of ..... and State of Iowa, possessed and seized of certain real and personal property which descends according to the laws of descent and distribution to a brother and a sister of said decedent, namely, B. K. and L. K.

That the real and personal property of said decedent has been duly appraised by the appraisers of property charged or sought to be charged with the payment of the collateral inheritance tax, and that the appraised value of said property has been fixed at $....., and that the debts of said estate which may be properly deducted, as provided by law, from the value of said assets amount to $.....

That the property, and the persons entitled thereto, are subject to the payment of a collateral inheritance tax as provided by the laws of the State of Iowa and that the said tax amounts to the sum of $....., being ..... per centum of the value of the property to which said heirs have succession.

That demand has been made upon said administrator and upon the aforesaid heirs for the payment of the tax required by law but that said administrator and said heirs have refused and failed to pay said tax, or any portion thereof, and still fail and refuse to pay said tax or any portion thereof, and that the sum is now wholly due and unpaid.

Wherefore, the plaintiff prays that judgment may be entered against X, as administrator of the Estate of Z, deceased, and against B. K. and L. K., for the sum of $..... with interest and penalty thereon from the ..... day of ....., 19...., together with the costs of this action, and that said judgment be decreed a lien upon the property of said Estate.

.....
Attorney for the Plaintiff.

(Add usual verification.)

Bequests to Executors or Trustees—When Liable to Collateral Inheritance Tax.—Sec. 1472 of the Code. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion or on the application of the treasurer of state, shall fix such compensation.

See the following section which in case of a conflict should prevail as it was enacted after the foregoing section of the Code. Edgar v. Greer, (1859) 8 Iowa 393a.

Bequests to Executors or Trustees Subject to Tax.—Sec. 1481-a21, Supplement, 1913. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceeds the statutory fees as compensation for their services, such excess shall be liable to such tax.

See the preceding section of the Code and the notation thereunder.

The Treasurer of State has followed the rule that an executor who receives a bequest exceeding in value the fees allowed by law shall be subject to the tax on the excess value. See page 49 hereof for the rule by which the fees of an executor are determined.

Tax on Legacies Charged Upon or Payable Out of Real Estate —Lien of Tax—Who Must Pay.—Sec. 1473 of the Code. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the

same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or treasurer of state, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or treasurer of state in his name of office, in the same manner as the payment of the legacy itself could be enforced.

See the following section which in case of a conflict should prevail as it was enacted after the passage of the Code above set forth. Edgar v. Greer, (1859) 8 Iowa 393a.

Legacies Charged upon Real Estate.—Sec. 1481-a22, Supplement, 1913. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or treasurer of state, and the same shall remain a charge against and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or treasurer of state in his name of office as herein provided.

See the preceding section of the Code and the notation thereunder.

Payment of Tax by Executor or Trustee. Sec. 1474 of the Code. Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

See the following section which in case of a conflict should prevail as it was enacted after the passage of the section of the Code above set forth.

Tax Deducted from Legacy or Collected from Legatee.—Sec. 1481-a18, Supplement, 1913. Every executor, administrator, referee or trustee having in charge or trust any property of an estate subject to said tax, and which is made payable by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the treasurer of state, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

See the preceding section of the Code and the notation thereunder.

Delinquent Taxes to Draw Interest.—Sec. 1481-a23, Supplement 1913. All taxes imposed by this act shall be payable to the treasurer of state, and except when otherwise provided in this act, shall be paid within eighteen (18) months from the death of the testator or intestate. All taxes not paid within the time prescribed in this act shall draw interest at the rate of eight per centum per annum thereafter until paid.

Where an interest in real property is given to another for a term of years or for life the tax must be paid within one year from the owner's death. See sec. 1481-a11, Supplement, 1913, page 106, hereof.

Collateral Inheritance Tax and Lien Book.—Sec. 1481-a25, Supplement, 1913. The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the collateral inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of a collateral inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page.

(1) The name, place of residence, and date of death of the decedent.

(2) Whether the decedent died testate, or intestate, and if testate, the record and page where the will was probated and recorded.

(3) The name and postoffice address of the executor, administrator, trustee, or grantee, with the date of appointment or transfer.

(4) The names, postoffice addresses and relationship, if known, of all the heirs, devisees and grantees.

(5) The appraised valuation of the personal property.

(6) The amount of inheritance tax due upon said personal property.

(7) A record of payment with amount and date.

(8) Date of filing objections and names of objectors.

(9) Blank for index and reference to all proceedings and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed.

(1) Real estate derived from .....(naming decedent) which is subject to the lien prescribed by the statute for collateral inheritance tax.

(2) A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.

(3) The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.

(4) The amount of the inheritance tax due upon each such piece.

(5) A record of payments, with dates and amounts.

Entries made by Clerk in Lien Book.—Sec. 1481-a29, Supplement, 1913. The clerk shall enter upon the collateral inheritance tax and lien book, the title of all estates subject to the inheritance tax as shown by the inventories or lists of heirs filed in his office, or as reported to him by the county attorney, treasurer of state, or other person, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from any other source, as may be necessary to the collection and enforcement of the tax. He shall also immediately index in the book kept in his office for that purpose, all liens entered upon the collateral inheritance tax and lien book. Failure to make such entries as are herein required, shall not operate to relieve the estate from the lien or defeat the collection of the tax.

Failure to Make Entry—Liability of Clerk—Should a clerk fail to enter in the tax and lien book of an estate subject to the payment of an inheritance tax, and injury results therefrom to an innocent purchaser, he would be liable on his bond for the damage resulting therefrom. Steel & Johnson v. Bryant et al., (1878) 49 Iowa 116. The clerk is also liable for the acts of his deputies in this matter and if he is required to reimburse any person as a result of the negligence of his deputy, he may maintain an action on the deputy's bond. Moore v. McKinley et al., Exrs., (1882) 60 Iowa 369; 14 NW. 769. For wilful or habitual neglect or failure to perform the duties of his office, the clerk is subject to the removal laws of this state. Section 1258-c, Supplement, 1913, as amended by 37th G. A. Chap. 391.

Duty of Clerk to Keep Probate Record.—Sec. 1481-a30, Supplement, 1913. In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventory, appraisements and all other matters and proceedings therein.

Delivery of Securities and Assets to Executors, etc.—Liability of Bank, Trust Company or Any Individual.—Sec. 1481-a36, Supplement, 1913. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator or legal representative of said decedent unless the tax for which such securities or assets are liable under this act shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the treasurer of state personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days' notice of such proposed transfer upon the treasurer of state or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this act.

See the provisions of the following section requiring corporations to report transfer of corporate stock.

Every deposit company, trust company, bank or other institution and every individual (or individuals) is liable for the payment of the inheritance tax on securities which are delivered to any executor, etc., unless, (1st) the tax is paid, or (2nd), unless security is given for the payment thereof. Notice given to the Treasurer of State of the intention to deliver the assets to the executor *does not release* the bank or person from liability for the tax.

In addition to the foregoing section, attention should be given to the provision of section 1481-a15, Supplement 1913, page 122 hereof, wherein anyone who removes property from this state without first having paid the tax as required by law, or without giving security for the payment thereof, may be convicted of a felony and subjected to fine and imprisonment.

See section 1481-a14, Supplement 1913, page 122 hereof, for the law relating to the amount and condition of a bond for payment of the inheritance tax.

ILLINOIS.

The constitutionality of a similar statute was sustained in the case of National Safe Deposit Co. v. Stead et al, (1911) 250 Ill. 584; 95 NE. 973; Ann. Cas. 1912B, 430.

PROCEDURE.

The notice to the Treasurer of State may be in substantially the following form:

Form No. 17.

NOTICE OF INTENTION TO DELIVER SECURITIES TO EXECUTOR.

To E. H. Hoyt, Treasurer of the State of Iowa:

You are hereby notified that the undersigned has in its possession certain securities and assets belonging to....., late of .....(name city)....., ...County, State of .....; and that we intend to deliver the said securities and assets to....., as executor (or legal representative) of the Estate of said decedent at our said place of business in ....., County of .....and State of Iowa on the..... day of ....., 19...., at ..... o'clock ... M.

You are therefore notified to govern yourself accordingly.

Dated the .....day of....., 19....

.....

By....., ...(title)....

Duty of Corporations to Report Certain Stock Transfers to Treasurer of State.—Sec. 1481-a38, Supplement, 1913. All Iowa corporations organized for pecuniary profit, shall on July 1st of each year, by its proper officers under oath make a full and correct report to the treasurer of state of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer the name of the person to whom the transfer was made, and the residence of such person; together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this act, and the tax has not been paid, the treasurer of state shall notify the corporation in writing of its

liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty (60) days from the date of such notice.

See the preceding section as to liability of a corporation for delivering assets to executor without the inheritance tax having first been paid.

Transfer of Corporate Stock—Liability of Corporation.—Sec. 1481-a37, Supplement, 1913. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the treasurer of state on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest, and costs, and it is the duty of the treasurer of state to enforce the payment thereof.

Foreign Estates—Must File Inventory and List of Beneficiaries— Every foreign estate having property within the State of Iowa is required to file an inventory of the assets of the estate located within this State and also a list of the beneficiaries of the estate. The Treasurer of State will supply foreign executors with the necessary blanks for making the required reports. The form is substantially as follows:

Form No. 18.

REPORT OF FOREIGN ESTATE TO THE TREASURER OF THE STATE OF IOWA.

In the Matter of the Estate of ....., Deceased. of.....County,..... } Inventory and Beneficiaries.

Comes now the undersigned..... { Administrator of / Trustee / Executor

the above entitled estate and states that the said.....was a resident of....., State of..... and that said decedent died { testate / intestate on the.....day of..... 19.., possessed of the following property located in the State of Iowa.

Div. 1 CORPORATE STOCK OF IOWA CORPORATIONS

No. of Shares	Name of Corporation	P. O. Address of Corporation	Appraised value Instr. No. 1	

Div. 2 PERSONAL PROPERTY OTHER THAN CORPORATE STOCK.

Description	Name and Location of Person or Institution Where Deposited	Appraised Value	

Div. 3 REAL PROPERTY

Description	Sec.	Twp.	Rng.	Lot	Block	County

BENEFICIARIES.

(See Instruction No. 2.)

Names	Relationship to Decedent	Residence

ESTIMATED ASSETS AND LIABILITIES OF ENTIRE ESTATE

(See Instruction No. 3.)

The assets of the *entire estate* are estimated to be of the gross value of ..... $.....

The debts of the entire estate are estimated to amount to $.....

The foregoing is a full, true and complete statement of said estate, located within the state of Iowa at the date of the owner's death, and of the beneficiaries and their place of residence as I verily believe.

.....

Administrator
Executor
Trustee

Subscribed and sworn to before me and in my presence by the said .....this.....day of....., 19...

.....

Notary Public in and for.....County.

My Commission expires .....

INSTRUCTIONS.

No. 1. If the property has been appraised, state the appraised value in this column.

No. 2. The Treasurer of State will refuse to accept this report unless the name, relationship, and P. O. address is given.

No. 3. These estimates should include the *entire estate* regardless of location of the assets, or where the debts are payable.

In addition to requiring the foregoing report the Treasurer of State has authority to demand certified copies of wills, deeds, or other papers on file in the court having original probate jurisdiction before issuing a receipt for the payment of the tax. See further on this matter, sec. 1481-a24, Supplement, 1913, as amended by 35 G. A., Chap. 121, page 115 hereof.

Foreign Estates—Procedure—When Appraisement Must Be Made— Not all foreign estates are required to take out ancillary administration in this state. But if the estate consists in whole, or in part, of real property passing to persons subject to the collateral inheritance tax of Iowa there must be ancillary administration. The Treasurer of State adheres to the rule that appraisal of real property made in a foreign state by foreign appraisers will not be adopted as the appraised value of the real property, therefore it is necessary that administration be had in Iowa and the property duly appraised by appraisers within this state. Administration should be applied for in the county wherein the real property is located; if located in several counties, administration in any one county will suffice.

For the law relating to local or domestic estate see page 78 hereof.

Foreign Estates—When Relief from Appraisement may be Obtained —Procedure.—If the assets of the foreign estate within the state of Iowa consist of shares of stock or personal property, it is not necessary that ancillary administration be had in this state or that the property be appraised here. For illustration, suppose John Doe died intestate, a citizen of Virginia, owning a hundred shares of stock in the Bankers Trust Company of Des Moines, this being all the property he owned within Iowa; and that in the process of administering upon his estate in Virginia, the shares of stock have been duly appraised by appraisers appointed in Virginia. As a rule the Treasurer of State is willing to accept such appraisement as the appraised value for Iowa inheritance tax purposes, and therefore the Treasurer is willing to dispense with appraisement in this state. In such case the foreign executor or administrator should obtain from the Treasurer of the State of Iowa, a blank form such as Form No. 19 herein and make his request to the Treasurer of State. If the executor's report is found to be fair and in proper form the Treasurer of State may accept it as a basis for the taxation of the inheritance tax. In event the Treasurer of State approves the report he will petition the court, usually the district court of Polk County, located at Des Moines, for relief from appraisement. The estate is then entered upon the probate records of the proper county and the relief prayed for

granted. There is no fee charged for entering the estate on the probate records or in the collateral inheritance lien record, unless the estate is wholly, or in part, administered upon within this state.

Form No. 19.

REQUEST FOR ACCEPTANCE OF FOREIGN APPRAISAL, ETC.

(See Instruction 1)

In the Matter of the Estate of .....
Deceased. } Probate No. .....

To the Treasurer of the State of Iowa:

Comes now the undersigned Executor / Administrator / Trustee of the above named estate and asks that the appraised value of the property listed in Divisions 1 and 2 of the Inventory of Assets belonging to said Estate located within the State of Iowa, and which has heretofore been filed with the Treasurer of the State of Iowa, be accepted by said Treasurer as the basis for the taxation of the Collateral Inheritance Tax imposed by the laws of the State of Iowa.

This applicant further states that the property reported in Divisions 1 and 2 of said Inventory was duly appraised on the .....day of ....., 19...., at ....., in the State of ....., in the manner and form required by the laws of the state of.....

This applicant further states that.....(See Instruction No. 2) is willing to charge ....self with the full appraised value of said property as shown in said Inventory as the basis for the assessment of the tax imposed by the State of Iowa.

Dated at ....., ..., this..... day of ....., 19.....

.....
Executor
Administrator
Trustee

Subscribed and sworn to by..... before me this.....day of ....., 19...

.....
Notary Public in and for.....County.
State of.....

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR

.....COUNTY

(See Instruction No. 3)

In the Matter of the Estate of ..... Deceased. } Foreign Estate Treasurer's Application for Relief from Local Appraisement

Comes now E. H. Hoyt, Treasurer of the State of Iowa, and to the Court states:

That on the.....day of....., 19.., the above named decedent died possessed of certain personal property situated within the State of Iowa that the Trustee / Administrator / Executor of said estate has filed a verified Inventory of the assets of said estate with the applicant whereby it appears said personal property is described as consisting of the items herein noted, and that the value assigned to each item has been thus fixed by the appraisers in the manner and form required by the laws of the State of .....

Div. 1 CORPORATE STOCK OF IOWA CORPORATIONS

No. of Shares	Name of Corporation	P. O. Address of Corporation	Appraised Value	

Div. 2 PERSONAL PROPERTY OTHER THAN CORPORATE STOCK

Description	Name and Location of Person or Institution where Deposited	Appraised Value	
Total Value of Personal Property and Corporate Stock			

That at the time of the death of said decedent he was a resident of the City of....., County of..... and State of.....; and that all or part of the property herein described passes to collateral beneficiaries and is therefore subject to the provisions of the Iowa law imposing a tax upon collateral inheritances or transfers.

That from the aforesaid Inventory now in the possession of this applicant it appears that said property has been duly appraised at the domicile of the decedent in the manner and the farm required by law, and that the values above stated are the ones respsectively given to each of said items.

If further appears that.....is willing to charge .....self with the full face value of said property as valued by the foreign appraisers as a basis for the assessment of the inheritance tax imposed by the State of Iowa.

This applicant further states that the exact amount of said tax can be determined without resort to the regular proceedings for the appraisement of property within this state comprising the estate, and that a waiver of appraisement by appraisers appointed by this court would not be to the detriment of the State of Iowa.

WHEREFORE, this applicant hereby consents to the relief of the aforesaid Estate from the regular appraisement required under the laws of the State of Iowa, and this applicant prays that an order be granted relieving said Estate from the necessity of local appraisement and that the Treasurer of State be authorized to accept said foreign appraisement as the basis for imposing the collateral inheritance tax provided by the laws of the State of Iowa.

.....

Treasurer of State.

By.....

Deputy.

ORDER OF COURT GRANTING RELIEF

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR .....COUNTY.

BE IT REMEMBERED, that on this .....day of....., 19...., the within application came on for hearing and it appearing that the inheritance tax can be determined without resort to a local appraisement of said property, it is hereby ordered that, for the reasons stated in the within application, the said Estate be, and the same is hereby relieved from local appraisement as required by law for the assessment of an inheritance tax.

It is further ordered and decreed that the Treasurer of State be, and hereby is authorized to accept said foreign appraisement as the basis upon which to impose the inheritance tax required by the laws of the State of Iowa.

.....

Judge of the.....Judicial District.

INSTRUCTIONS.

No. 1. If any foreign Estate desires to be relieved from the necessity of having the property of the Estate appraised in the State of Iowa, this REQUEST FOR ACCEPTANCE OF FOREIGN APPRAISEMENT MUST BE MADE.

After receiving this Request the Treasurer of State will apply to the proper court for an order granting such relief.

Real property must be appraised by appraisers appointed by a court of the State of Iowa. Foreign appraisement will not be accepted. This relief applies only to personal property.

No. 2. State the name of the person willing to charge himself with the full appraised value of the property as the basis for the imposition of the Iowa inheritance tax. The executor, administrator, or trustee may charge himself with the tax or any heir or beneficiary may do so. It is necessary that the name of the person willing to pay a tax on the basis of the appraised value be inserted in this place.

No. 3. Foreign Executors, etc., should make no entries of this page. The Treasurer of State will fill in this part of the Application.

Foreign Estates—Deduction of Debts.—Sec. 1481-a39, Supplement, 1913. Whenever any property belonging to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

Marshalling of Assets—The purpose of this statute is to prevent what is called "marshalling of assets". By this is meant that it is to prevent collateral heirs from deducting or paying all debts of the estate from property in this state and then taking the property located in another state free from a collateral inheritance tax of Iowa.

The following case illustrates the law in operation; thus, where the entire assets of the estate consisting of property in both New York and Iowa amounts to $167,371.00 and property in Iowa is valued at $43,762.00 and the debts of the estate amount to $16,300.00, the proportion of debts to be charged against the property in Iowa should be $4,262.00, leaving property of the net value of $39,500.00 subject to the tax. Wieting v. Morrow, (1911) 151 Iowa 590; 133 NW. 193.

MASSACHUSETTS.

In the case of Kingsbury v. Chapin, (1907) 196 Mass. 533; 82 NE. 462, it was held the executors could not evade the tax of Massachusetts by using the property within that state for the payment of the debts and legacies, to the exemption of the property in New Hampshire, the de-

cedent's domicile. The proper procedure would be to charge the debts and the legacies and expenses of administration upon all the assets of the estate, and thus render the assets in Massachusetts chargeable with only a proportional part thereof.

Property of Foreign Estates in Iowa not Specifically Devised. Sec. 1481-a40, Supplement, 1913. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this act and in part subject to said tax and there is no specific devise of the property within this state to direct heirs or if it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state, belonging to such foreign estate, shall be subject to the tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act relating to the deduction of the proportionate share of indebtedness. Provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this act such excess shall not be subject to said tax.

See the case illustrating method of deducting debts given in annotations in preceding section. It is proper to charge bequests to collateral heirs for right to succession of property in the same manner. In the case of Wieting v. Morrow, (1911) 151 Iowa 590; 132 NW. 193, the total debts were applied *pro rata* to property in Iowa likewise the entire assets located in Iowa were applied *pro rata* to every provision of the will, including the widow's interest therein.

Compromise Settlement—How Approved.—Sec. 1481-a41, Supplement, 1913. Whenever an estate charged or sought to be charged with the collateral inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the treasurer of state may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon;

but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

Refunding of Tax When Wrongfully Exacted—Procedure.—Sec. 1481-a43, Supplement, 1913. When within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which a collateral inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the treasurer of state shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto, when a certified copy of the record of such court showing the fact of non-liability of such property to the payment of such tax has been filed with the executive council of the state, the executive council shall if the case has been finally determined issue an order to the auditor of state directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days' notice of the application therefor shall have been given to the treasurer of state of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices.

While a refund may be ordered for taxes erroneously exacted, yet *no* interest is to be refunded thereon, as the statute makes no provision therefor. Wieting v. Morrow, (1911) 151 Iowa 590; 132 NW. 193.

For a case where a refund was made to a non-resident alien heir after the estate had escheated to the estate, see McKeown v. Brown, Treas., (1914) 167 Iowa 489; 149 NW. 593, cited in annotations on page 142 hereof. See also this same case on second appeal, McKeown v. Morrow, (1918) ——— Iowa ———; 167 NW. 193, on the proposition as to interest on funds held by the state as having escheated. (Inheritance taxation not involved.)

The foregoing section makes provision for the refunding of any tax erroneously exacted from any person, and sets out the method of procedure. If any person is required to pay a greater sum than he should be required to pay on account of a mere clerical error in computing the tax, it is not necessary to ask for a refund in the usual manner, but the person should point out to the Treasurer of State the fact that an error has been committed and the matter will be taken care of by the Treasurer. In all other cases where a refund is desired, it is necessary that a petition be presented to the district court asking that an order be entered showing non-liability.

PROCEDURE.

Anyone desiring to obtain a refund should present a petition to the district court in substantially the following form, varying it, of course, according to the facts of the case.

Form No. 20.

PETITION FOR REFUND.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR .....COUNTY.

X Plaintiff, vs. E. H. Hoyt, as Treasurer of the State of Iowa. Defendant.	Law No. Petition for a Refund of Inheritance Tax.

Comes now, X , the above named plaintiff and to the court states:

That on or about the.....day of....., 19...., one .....Z....., died intestate at....., in the County of ....., and State of Iowa; that at the time of his death he was possessed of real and personal property of the gross value of $....., and that there was properly allowed and deducted from this said sum the debts of said decedent and the costs of administration totaling $.....; that there remained, subject to the collateral inheritance tax of the State of Iowa, the sum of $.....

That this petitioner was entitled to an undivided.....interest in said estate, valued at $....., as one of the heirs at law of the said decedent; that on succession to said sum this petitioner was liable for the payment of an inheritance tax equal to five per cent (5%) of the sum to which he had succession.

That at all the times mentioned herein this petitioner was a resident of ....., England, and a subject and citizen of the Kingdom of Great Britain.

That in disregard of, and in violation of the treaty existing between the United States and the Kingdom of Great Britain, the State of Iowa proceeded to and did collect from this petitioner a sum equal to ten per cent (10%) of the value of the property to which this petitioner was entitled to have succession to. And that by reason of said unlawful assessment the sum of $..... was erroneously exacted from this petitioner.

That on the ..... day of ....., 19...., this said petitioner paid to the Treasurer of State the sum of $....., as shown by the receipt of the Treasurer of State, a copy of which is hereto attached and marked Exhibit "B."

Wherefore, the petitioner prays that the court enter an order fixing the time and place for the hearing of this petition, that upon such hearing an order be entered showing the fact of the non-liability of this peti-

tioner for a collateral inheritance tax in excess of the sum of $....., and that said order further show that the sum of $..... was erroneously exacted from this petitioner as herein set forth. And that the costs of this action be taxed as provided in Sec. 1481-a35, Supplement, 1913.

.....
Plaintiff's attorneys.

State of Iowa, }
..... County. } ss.

I,.....X....., being first duly sworn depose and say that I am the plaintiff in the above entitled action; that I am acquainted with the facts and statements contained in said petition and that the same are correct and true as I verily believe.

.....
(Signature of Plaintiff.)

Subscribed and sworn to by .....X..... before me this ..... day of ....., 19.....

.....
Notary Public in and for ..... County.

The petition of the plaintiff should have been attached thereto an order whereby the court may fix the time and the place of the hearing of the application. This order should fix the date far enough ahead so as to give the Treasurer of State fifteen days notice thereof. The order should be in substantially the following form:

Form No. 21.

ORDER FIXING THE DATE OF HEARING ON PETITION FOR REFUND.

The hearing of the petition of the plaintiff herein for a refund of collateral inheritance taxes alleged to have been erroneously exacted is hereby fixed for the ..... day of ....., 19...., at ..... M., o'clock at the court house in ..... county, State of Iowa.

.....
Judge.

After the court has fixed the time when the petition for a refund will be heard, it is necessary that the petitioner serve the Treasurer of State with a notice setting forth the time and place of the hearing. This notice may be served in the same manner as original notices are served. As a matter of practice, however, the notice may be mailed to the Treasurer of State and he will accept service thereof and thus avoid the expense of having an officer serve the same.

The notice should be in substantially the following form:

Form No. 22.

NOTICE OF A PETITION FOR REFUND.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR ..... COUNTY.

X Plaintiff, vs. E. H. Hoyt, as Treasurer of the State of Iowa, Defendant.	Law No..... Notice of the Filing of a Petition for a Refund of Inheritance Tax, and the Time and Place of Hearing.

To E. H. Hoyt, as Treasurer of the State of Iowa:

You are hereby notified that there is now on file in the office of the clerk of the district court of the State of Iowa, in and for..... County, the petition of the plaintiff in the above entitled cause alleging that the sum of $..... was erroneously exacted from this plaintiff as an inheritance tax on his succession to property belonging to the estate of .....Z....., deceased, of ..... county and state of Iowa.

That the petitioner bases his claim for a refund upon the following facts, to-wit:.....(state facts briefly).....

You are further notified that by an order of one of the judges of said district court, that the time for hearing on the petition for a refund has been fixed for the ..... day of ....., 19...., at ..... o'clock, ...M, before the Honorable ....., one of the judges of said court, said hearing to be at the courthouse in said county, at which time you are at liberty to appear and show cause, if any, why an order should not be entered showing non-liability on the part of this petitioner for the tax claimed in his petition to have been erroneously exacted; and for such taxation of the costs of this action as the court may deem just and equitable.

Dated this ..... day of ....., 19.....

.....
Attorneys for Plaintiff.

If the court finds that the petitioner has been required to pay a greater sum than he ought to have paid, an order showing such finding should be entered of record. The petitioner should then obtain a certified copy of the record of the court in the matter and forward the same to the Executive Council of the State of Iowa, at Des Moines. If the Executive Council finds the order of court to be what is known as a final order, it may direct the Auditor of State to issue a warrant upon the Treasurer for the tax wrongfully exacted. This is the only method of obtaining a refund except in case of a clerical error as pointed out on page 101 hereof.

Assessment and Taxation of Remainders—Deductions in Appraisements—Payment of Tax—Default.—Sec. 1470 of the Code. When any person whose estate, over and above the amount of his just debts, exceeds the sum of one thousand dollars shall bequeath or devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, during life or a term of years, and the remainder to a collateral heir or a stranger to the blood, the court, upon the determination of such estate for life or years, shall, upon its own motion or upon the application of the treasurer of state, cause such estate to be appraised at its then actual market value, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainder man during the time of the prior estate, to be ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainder man within sixty days from the approval by the court of the report of the appraisers. If such tax is not paid within said time, the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax, to be sold.

See the two following sections which should prevail in case of a conflict as they were enacted after the passage of the provision of the Code above set forth.

Where the total value of the entire estate, after deducting debts, is less than $1,000.00 in value, the estate is exempt; if over that sum *all* property passing to collateral heirs is subject to the tax. Herriott v. Bacon, (1900) 110 Iowa 342; 81 NW. 701, and the same interpretation is adhered to in Gilbertson v. McAuley, (1902) 117 Iowa 522; 91 NW. 788.

Deferred Estates in Real Property—How and When Appraised.—Sec. 1481-a10, Supplement, 1913. When any person, whose estate over and above the amount of his debts, as defined in this act, exceeds the sum of one thousand dollars, shall bequeath or devise any real property to or for the use of persons exempt from the tax imposed by this act, during life or for a term of years, and the remainder to a collateral heir, said property upon the determination of such estate for life or years, shall be appraised at its then actual market value from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainder man during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in the next succeeding section.

See the preceding section and the notation thereunder.

The foregoing section does not state in specific terms the time at which the value of the estate is to be determined. For the rule established in New York, see the annotations under section 1481-a16, Supplement, 1913, as it appears in this volume on page 108 hereof.

Life, Term and Deferred Estates in Real Property—Appraisement—Tax Paid, When.—Sec. 1481-a11, Supplement, 1913. Whenever any real property of a decedent shall be subject to such tax and there be an estate or interest for life or term of years given to a party other than those especially exempt by this act, the clerk shall cause such property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to such estate or interest shall within one (1) year from the death of decedent owner pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax and interest, to be sold. Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report or upon information from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the collateral inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in the next preceding section, and the tax upon such remainder interest shall be paid by the remainderman within one (1) year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax and interest, to be sold.

See the annotations following section 1481-a16, Supplement 1913, on page 108 hereof, as to the specific time at which the value of the estate is to be determined.

Note the provisions of the two preceding sections.

Life, Term and Deferred Estates in Personal Property—Tax Paid, When.—Sec. 1481-a12, Supplement, 1913. Whenever any personal property shall be subject to the tax imposed by this act and there be an estate or interest for life or term of years

given to one or more persons and remainder or deferred estate to others, the clerk shall cause the property so devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests so devised or conveyed shall be determined as provided in section seventeen (17) of this act (Sec. 1481-a16, Supplement, 1913, page 108 hereof), and the tax upon such estates or interests as are liable for the tax imposed by this act shall be paid to the treasurer of state from the property appraised or by the persons entitled to such estate or interest within eighteen (18) months from the death of the testator, grantor, or donor, provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior state by the giving of a good and sufficient bond as provided in the next succeeding section.

See page 106 for the provisions as to the payment of the tax in case an interest is acquired in real property for life or for a term of years.

Bond to Secure Payment of Tax on Deferred Estates.—Sec. 1481-a13, Supplement, 1913. When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited, and the amount thereof be forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this act, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this act upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein re-

quired to secure payment of such tax, and the tax shall remain a lien upon such real estate until this tax upon such deferred estate or interest is paid.

The Condition and the Amount of the Bond—Section 1481-a14, Supplement 1913, page 122 hereof, states that the bond must be equal to twice the amount of the tax, interest and costs that may be due from the estate, but in no case shall a bond be received for less than $500.

Value of Annuities, Life, Term or Deferred Estates—How Determined.—Sec. 1481-a16, Supplement, 1913. The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to the collateral inheritance tax, shall be determined for the purpose of computing said tax by the rule of standards of mortality and of value commonly used in actuaries' combined experience tables as now provided by law. The taxable value of annuities, life or term, deferred or future estates, shall be computed at the rate of four (4) per cent per annum of the appraised value of the property in which such estate or interest exists or is founded. Whenever it is desired to remove the lien of the collateral inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed.

Method of Determining Value of Life Estate—Annuity, etc.—There has been considerable confusion in estimating the value of a life estate, an annuity, etc. Appraisers should read this section with care and follow it closely in appraising property passing to such a beneficiary.

It should be distinctly remembered that the collateral inheritance tax appraisers should not appraise the value of the life estate. It is the duty of the appraisers to place an estimate upon *the value of the property* which passes to such beneficiary. In estimating this value, the appraisers should *not* consider the length of time the beneficiary may be allowed to enjoy the property or the income therefrom. The appraisers should place a valuation on such property just the same as if it were passing in fee to the beneficiary. In making this appraisement, the appraisers should follow the same rules and the same procedure as in cases where the property passes in fee to the beneficiary.

When the appraisers have placed a valuation upon the property passing to another for life, or for a term of years, they should file their report with the clerk of the district court. The clerk then sends a certified copy of this Appraisement Bill to the Treasurer of State. That officer then proceeds to estimate the value of the life estate, or annuity, by the use of what is ordinarily termed mortality tables. These tables are set forth in this compilation and an explanation of their use is also given.

These tables are always used by the Treasurer of State in estimating the value of any estate less than in fee. Under the statute the Treasurer of State has no authority to consider any facts which would tend to increase or diminish the value of the life estate, as for instance, the probability that the beneficiary, on account of an incurable disease in its last stages, would not live out his expected term.

The courts are not entirely agreed on this feature but the weight of authority is in harmony with the rule followed by our State. Pennsylvania is one of the states holding that evidence of the present health of a beneficiary may be taken into consideration in estimating the value of a life estate. Re Goldstein, 14 W. M. C. 176 (Pa.); Re Robertson, 5 Dem. 92.

MASSACHUSETTS.

This state levies the tax according to the "actuaries combined experience tables" regardless of the fact that the estate terminates before valuation is made. Howe v. Howe, 179 Mass. 546; 61 NE. 225; 55 L. R. A. 626.

NEW YORK.

The case of Re White, 208 N. Y. 64; 46 L. R. A. (ns) 718; 101 NE. 793; Ann. Cas. 1914D, 75, clearly presents the rule as to the time when the value of the estate is to be determined. In this particular case, Elizabeth White bequeathed the sum of $200,000.00 to a trustee who was to pay, after deducting certain expenses, to Gilbert B. Morgan, a grandson, the income derived from the trust fund. The testatrix died in March, 1908. A contest arose over the probating of the will and hence it was not admitted to probate until April, 1910. In the meantime, Gilbert B. Morgan died in November, 1908, and of course at his death his interest in the trust fund terminated. The Court of Appeals held that the value of Gilbert B. Morgan's estate in the trust fund was to be determined at the value it possessed at the time of the testatrix's death, regardless of the time when the estate terminated, or that the estate had terminated prior to the time an appraisement was made. It should be noted in this case, that the grandson never received any benefit from the property as he died before the will was admitted to probate, yet the tax was assessed.

The New York Court stated in part, "The interest of the life beneficiary accrued on the death of the testatrix and its value as to the time of that occurrence is the sum to which the rate per centum fixed by the statute should be applied, and under the provision within section 222 the tax was then due and payable. In as much as it became due and payable at the time of the transfer, or at the death of the testatrix, it would seem to follow, logically and necessarily that the amount of it should be determined upon the conditions then existing."

It will thus be noted that New York bases their estimate of the value of a life estate on the expectancy at the time of the death of the testator regardless of events that may thereafter immediately terminate the estate. Again in the estate of Re Jones, 28 Misc. 356; 59 N. Y. Supp. 983, the statutory method of determining the value of a life estate, by the use of mortality tables, was approved although the life tenant died before the appraisal.

Expectancy or Life Tables—The tables printed herein are those adopted, and were used by the United States government in the assessment of the inheritance tax under the War Revenue act of June 13, 1898, prepared for the Internal Revenue service under the direction of the government actuary, Mr. J. S. McCoy. They are based upon the "Actuaries or Combined Experience Tables," money being considered worth four (4) per cent per annum.

These tables vary from those used by many insurance companies but this difference may be accounted for, for the reason that the tables of life insurance companies are many times based upon what is known as "selected risks." That is, upon persons selected as risks on account of their good health. Necessarily the "selected risk" tables show a greater expectancy than those given herein.

The tables are as follows:

Table No. I. Single-life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest.

Age	Mean redemption Period	Annuity, of present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age	Age	Mean redemption period	Annuity, or present value of one dollar due at the end each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age
0	23.179	$14.72829	$0.39507	50	18.113	$12.47032	$0.48191
1	30.552	17.30771	0.29586	51	17.527	12.17919	0.49311
2	35.626	18.69578	0.24247	52	16.947	11.88408	0.50446
3	37.572	19.15901	0.22465	53	16.372	11.58531	0.51595
4	38.702	19.41226	0.21491	54	15.804	11.28325	0.52757
5	39.352	19.55301	0.20950	55	15.243	10.99789	0.53931
6	39.654	19.61731	0.20703	56	14.689	10.66982	0.55116
7	39.691	19.62502	0.20673	57	14.143	10.35931	0.56310
8	39.625	19.61097	0.20727	58	13.603	10.04630	0.57514
9	39.264	19.53413	0.21022	59	13.072	9.73131	0.58726
10	38.891	19.45359	0.21332	60	12.549	9.41474	0.59943
11	38.507	19.36943	0.21656	61	12.029	9.09765	0.61163
12	38.113	19.28184	0.21993	62	11.532	8.78052	0.62382
13	37.710	19.19065	0.22344	63	11.039	8.46412	0.63600
14	37.298	19.09590	0.22708	64	10.557	8.14888	0.64812
15	36.877	18.99764	0.23086	65	10.088	7.83552	0.66017
16	36.447	18.89569	0.23478	66	9.630	7.52476	0.67212
17	36.010	18.79010	0.23884	67	9.185	7.21699	0.68396
18	35.565	18.68070	0.24305	68	8.756	6.91298	0.69565
19	35.113	18.56751	0.24740	69	8.333	6.61301	0.70719
20	34.652	18.45038	0.25191	70	7.926	6.31716	0.71857
21	34.196	18.32932	0.25656	71	7.532	6.02612	0.72976
22	33.711	18.20416	0.26138	72	7.151	5.74003	0.74077
23	33.230	18.07471	0.26636	73	6.782	5.45928	0.75157
24	32.742	17.94097	0.27150	74	6.425	5.18402	0.76215
25	32.248	17.80274	0.27682	75	6.081	4.91463	0.77251
26	31.747	17.65984	0.28231	76	5.749	4.65125	0.78264
27	31.239	17.51224	0.28799	77	5.428	4.39383	0.79254
28	30.725	17.35968	0.29386	78	5.119	4.14286	0.80220
29	30.205	17.20225	0.29991	79	4.823	3.89858	0.81159

(Continued on next page)

Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age	Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age
30	29.678	17.03961	0.30617	80	4.537	3.66071	0.82074
31	29.147	16.87176	0.31262	81	4.262	3.42900	0.82965
32	28.608	16.69846	0.31929	82	3.995	3.20258	0.83836
33	28.067	16.51964	0.32617	83	3.737	2.98024	0.84691
34	27.516	16.33503	0.33327	84	3.484	2.76106	0.85534
35	26.961	16.14437	0.34060	85	3.236	2.54366	0.86371
36	26.401	15.94755	0.34817	86	2.992	2.32795	0.87200
37	25.834	15.74427	0.35599	87	2.752	2.11384	0.88024
38	25.263	15.53421	0.36407	88	2.517	1.90115	0.88842
39	24.685	15.31722	0.37241	89	2.286	1.69107	0.89650
40	24.101	15.09295	0.38104	90	2.062	1.48540	0.90441
41	23.511	14.86102	0.38996	91	1.845	1.28432	0.91214
42	22.915	14.62122	0.39918	92	1.637	1.09024	0.91961
43	22.313	14.37356	0.40871	93	1.442	0.90647	0.92667
44	21.708	14.11860	0.41852	94	1.263	0.73687	0.93320
45	21.103	13.85713	0.42857	95	1.103	0.58435	0.93906
46	20.499	13.58958	0.43886	96	0.975	0.46182	0.94378
47	19.896	13.31608	0.44935	97	0.877	0.36698	0.94742
48	19.298	13.03942	0.46002	98	0.746	0.24038	0.95229
49	18.703	12.75716	0.47088	99	0.500	0.00000	0.96154

Explanatory Notes and Examples—The first column shows the age of the person under consideration.

The second column shows the corresponding "mean redemption period" and represents the time in years in which the present value of annuities and reversions certain will become equal, respectively, to the present value of annuities and reversions contingent on the duration of life. The "mean redemption period" is ordinarily designated the expectancy of life during which a beneficiary will enjoy the life estate.

The third column shows the present value of an annuity, for life, of one dollar per year, the last payment being made at the end of the year prior to the one in which death occurs.

The fourth column shows the present worth of one dollar payable at the end of the year in which death occurs.

The table appearing on page 113 hereof is to be used in case the annuity is for a definite number of years and not based upon the expectancy of any life, as for instance where the annuity is for a period of ten years.

EXAMPLE NO. 1.

Suppose a testator bequeathed to his niece the income for life of $10,000, the niece being an infant a week old, and you want to ascertain the amount of the tax to be paid on this bequest.

By referring to the first column of the table we find that an infant less than one year old is expected to live 23.179 years. Now if $1.00 is

given to the niece at the end of each year of her life, the present worth of that annuity of $1.00 will be $14.72829 as shown by the third column of the table. This value is computed on the basis that a dollar will earn four cents each year.

Now the $10,000 at 4% will earn the niece $400 per year. If the present annuity value of $1.00 for 23.179 years is $14.72829, then the $400 would be worth 400 times the annuity value of $1.00, or $5891.316. Supposing the tax rate to be 5%, then the State would levy its 5% tax upon the $5891.316, making a tax of $244.56 due the State.

EXAMPLE NO. 2.

Now let us suppose a testator bequeathed the income from 75 shares of bank stock, 100 shares of stock in the Rock Island Railway Company, and the interest received from a $10,000 mortgage to his brother, age 36, for life. The appraisers have proceeded to appraise the shares of stock as required by law and the Appraisement Bill shows they have valued the stock at $14,250, and the mortgage at its face value of $10,000, making the total assets of the estate amount to $24,250. Now $24,250 at 4% interest would yield an income of $970 per year. At the age of 36, the brother would have an expectancy of 26.401 years and the present annuity value of $1.00 for this period would be $15.94755. $970 would be worth 970 times the present annuity value of $1.00, or $15,469.12. The tax of 5% would be levied upon this sum, thus making $773.45 due the State as inheritance tax.

EXAMPLE NO. 3.

Let us suppose that in the preceding example that at the brother's death the residue of the estate was to go to other collateral heirs subject to the tax. As before pointed out the appraised value of the assets has been fixed at $24,250. By referring to our table we find the fourth column to give us the present or reversionary value of $1.00 when the life tenant is 36 years of age and his expectancy is 26.401 years, to be valued at .34817, or 34 cents 8 and 17-100 mills. We have here an estate of a present value of $24,250 which will not pass to the residuary heir until 26.401 years expire. To find the present value of the reversionary estate we multiply the value of the estate by the reversionary value of $1.00 or 24,250 times .34817 which equals $8443.12, on which a tax of 5% will be levied by the State, thus making a tax of $422.15.

EXAMPLE NO. 4.

Or take another case, suppose a testator gives to his sister a life estate in a farm, she being 59 years of age. The farm of 160 acres is appraised at $62.50 per acre totaling in value $10,000. This amount at 4% interest will yield $400 per year. The table informs us that a person at 59 years of age is expected to live 13.072 years, and that the present annuity value of $1.00 for this period is $9.73131. $400 would be 400 times the present annuity value of $1.00, or $3892.524 on which a tax of 5% would be levied equaling $194.62.

EXAMPLE NO. 5.

Suppose a case where the testator directs his executors to pay to his sister the sum of $1,000 per year as long as she lives, she being 65 years of age at the time of the testator's death. Her expectancy would be 10.088 years. The present annuity value of $1.00 for this period would be $7.83552 and $1,000 would be worth 1,000 times that amount, or $7,835.52 on which the State would levy a 5% tax amounting to $391.77.

Table No. II. Present value of annuities and reversions certain upon a 4 per cent basis.

Number of years	Present worth of an annuity of one dollar, payable at the end of each year, for a certain number of years	Present worth of one dollar, payable at the end of a certain number of years	Number of years	Present worth of an annuity of one dollar, payable at the end of each year, for a certain number of years	Present worth of one dollar, payable at the end of a certain number of years
	Annuity	Reversion		Annuity	Reversion
1	$0.96154	$0.961538	16	$11.65229	$0.533908
2	1.88609	0.924556	17	12.16567	0.513373
3	2.77509	0.888996	18	12.65929	0.493628
4	3.62989	0.854804	19	13.13394	0.474642
5	4.45182	0.821927	20	13.59032	0.456387
6	5.24214	0.790314	21	14.02916	0.438834
7	6.00205	0.759918	22	14.45111	0.421955
8	6.73274	0.730690	23	14.85684	0.405726
9	7.43533	0.702587	24	15.24696	0.390121
10	8.11089	0.675564	25	15.62208	0.375117
11	8.76047	0.649581	26	15.98277	0.360689
12	9.38507	0.624597	27	16.32958	0.346816
13	9.98565	0.600574	28	16.66306	0.333477
14	10.56312	0.577475	29	16.98371	0.320651
15	11.11839	0.555265	30	17.29203	0.308319

This table is to be used only in cases where the length of time in which the annuity is to be paid is certain. If the annuity is based upon the expectancy of any person then Table No. I should be used in computing the value of the estate and the tax thereon.

EXAMPLE NO. 6.

Suppose a testator leaves property valued at $50,000, and his niece is to have the income from it for 20 years, it then to revert to the testator's youngest brother. You want to find the present value of the niece's interest as well as that of the testator's brother.

The income from $50,000 at 4% would be $2,000 per year.

The table informs us that the present worth of an annuity of $1.00 for 20 years is $13.59032. The present value of an annuity of $2,000 would be worth 2,000 times the present worth of an annuity of $1.00 for 20 years, or $27,180.64. The State would levy its tax of 5% on this sum, making a total tax of $1,359.03 due the State.

Now the testator's brother would be entitled to the $50,000 after the

niece had received the benefit therefrom for 20 years. The third column informs us that the present worth of a "reversionary" dollar, withheld for 20 years, is .456387, or 45 cents 6 and 387-1000 mills. In this case $50,000 is to revert to the brother, hence it would be 50,000 times .456387, or $22,819.35. On this sum the State would levy its 5% tax, amounting to $1,140.96.

EXAMPLE NO. 7.

Suppose a testator bequeathed to his sister $500.00 per year for 10 years. You now want the present worth of that annuity.

Opposite 10 we find the present worth of an annuity of $1.00 for that term of years to be $8.11089. $500 would be worth 500 times the value of an annuity of $1.00, or $4,055.445; on this sum the State would levy its 5% tax, amounting to $202.77.

EXAMPLE NO. 8.

Suppose B bequeaths the use of his 320 acre farm to C for a period of five years and you want to find the present worth of this bequest for the purpose of imposing the inheritance tax. In such cases the land must be appraised in the usual manner and we will take it that the appraisers have found the land to be worth $130 per acre, making a total value of $41,600. This sum at 4% interest would yield an income of $1,664 per year. The present worth of an annuity of $1.00 for five years we find to be $4.45182. The present worth of an annual income of $1,664 for five years would be 1,664 times as great as the present worth of an annuity of $1.00 or $7,408.028, on which the State would levy its 5% tax, amounting to $370.40.

Contingent Estates, Devises or Legacies.—Sec. 1481-a44, Supplement, 1913. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. When a devise, bequest or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the

highest rate possible under the terms of this act if no such contingency existed; provided, that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in section forty-four (44) (Sec. 1481-a43, Supplement, 1913, page 101 hereof) of this act in other cases.

For the rule to be used in determining the exact time when the value of an estate is to be determined, see the annotations following sec. 1481-a16, Supplement, 1913, appearing on page 108 hereof.

The supreme court of Iowa thus far has had no occasion to pass upon the foregoing section. The Treasurer of State in view of the statute has followed the rule as recognized in Minnesota. (See the following citation):

MINNESOTA.

It has been held under the Minnesota statutes that if the tax rate cannot be definitely determined at the time of the transfer of property, the tax should be paid at the highest rate to which it in any event would be subject, and if it eventually transpires that a lower rate should have been levied, a refund may be ordered. State v. Probate Court, ... Minn. ...; 162 NW. 459.

Proofs Furnished Treasurer of State on Demand.—Sec. 1481-a24, Supplement, 1913, as amended by 35 G. A. chap. 121. Before issuing his receipt for the tax, the treasurer of state may demand from administrators, executors, trustees or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to said treasurer certified copies of wills, deeds, or other papers, or of such parts of their reports as he may demand, and upon the refusal or neglect of said parties to comply with the demand of the treasurer of state, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting debts for which the estate may be liable, (*) and upon payment of such tax the treasurer of state shall forthwith transmit a duplicate receipt, to the clerk of the court of the county in which the estate is being settled, showing the payment of such tax.

(*) Added by 35 G. A. chap. 121.

The Treasurer of State requires that the following form be used in reporting the Assets and Liabilities of each domestic estate before issuing his receipt. These forms may be secured from the Treasurer of State upon request. Follow the instructions given on the form with care.

Form No. 23.

REPORT TO THE TREASURER OF STATE OF IOWA OF ASSETS AND LIABILITIES

To the Treasurer of State, Des Moines, Iowa:

The Estate of ..... late of .....

County, State of ....., is subject, as hereinafter shown, to the tax assessed against collateral inheritances by the State of Iowa. The benficiaries of the estate, the nature and amount of the property comprising the estate subject to said tax, the debts owing by the decedent at the time of his death, and the expenses incident to the administration and settlement of the estate are fully set out below:

The decedent owner died on the.....day of....., 19..

and .....qualified as ..... on the.....

day of.....19..

The beneficiaries of the estate are the following: (See Instruction No. 1.)

Name	Relation	Address	Approximate Amount Due Beneficiary
			$
			$
			$
			$
			$

When an estate is liable for the tax *ONLY* upon certain legacies or specific bequests, the amount of which and the tax thereon are determinable without regard to the balance of the estate devised or passing to persons exempt, the executor or administrator, if he is willing to charge himself with the tax on the full amount of the legacies, need not make returns as to the real and personal property and the debts of the estate. This rule does not apply when the "residue" is to be divided between direct and collateral heirs.

ASSETS

The estate consisted of the following classes of property, *the values thereof appraised or otherwise determined as provided by the inheritance tax law*, being as shown below: (Real property subject to a mortgage is to be appraised at its value *less the mortgage*, or in other words it is only the equity or redemption that is to be appraised.)

REAL PROPERTY

LANDS AND LOTS (See Instruction No. 2)	County	Sec.	Twp.	Rng.	Lot	Block	Value

Total Value of Real Property (after deducting mortgage Indebtedness) ..... $.....

PERSONAL PROPERTY

Cash ..... $.....

Money on deposit ..... $.....

Book accounts ..... $.....

Securities—

Bank stock (including dividends and profits accrued at time of death) .....$.....

Corporation stock (including dividends and profits accrued at time of death) .....$.....

Bonds (including interest accrued at time of death) .....$.....

Mortgages (including interest accrued at time of death) .....$.....

Notes (including interest accrued at time of death) .....$.....

Total securities ..... $.....

Live Stock—

Horses ....$.....

Mules ....$.....

Cattle ....$.....

Swine ....$.....

Sheep ....$.....

Other stock ....$.....

Total live stock ..... $.....

Grain in storage .....$.....

Hay and other crops ..... $.....

Household furniture ..... $.....

Miscellaneous property ..... $.....

Property brought within the state for distribution..... $.....

Total personal property ..... $.....

Total value of entire assets of estate .... $.....

LIABILITIES

The debts owing by the decedent at his death and the expense of administration in probate payable out of the estate as provided by law, are given in detail as follows: (Do not include indebtedness secured by a mortgage on real property as a debt in listing the liabilities. The mortgage indebtedness is deducted in appraising the value of the real property.)

State and local taxes due January 1, 19.., and unpaid at date of death (See Instruction No. 3.) ..... $.....

Chattel mortgage indebtedness (owing at time of death) $.....

Notes (owing at time of death) ..... $.....

Medical attendance ..... $.....

Funeral expenses ..... $.....

Monument and grave, etc. ..... $.....

Court costs ..... $.....

Appraiser's fees (See Instruction No. 4) ..... $.....

Executor's or Administrator's Statutory fees (See Instruction No. 5) ..... $.....

The amount paid for the executor's bond ..... $.....

The attorney's fees in ordinary probate proceedings.... $.....

Miscellaneous debts and claims (due prior to death)

(Specify) ..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

..... $.....

Total miscellaneous debts ..... $.....

Total liabilities .....$.....

(Do not include indebtedness secured by mortgage on real property)

STATE OF IOWA, } ss.
.....COUNTY }

I, ..., do solemnly swear that the above and foregoing statements of assets and liabilities of the estate of .... are true and correct as I verily believe.

.....

Subscribed and sworn to before me, and in my presence, by said ..... on this.....day of....., 19....

.....

Notary Public in and for.....County.

RECAPITULATION

Real property	$.....
Personal property	$.....
Total assets	$.....
Total liabilities	$.....
Net estate, after deducting debts, as provided by law.....	$.....
Property exempt (to direct heirs; religious, charitable or educational institutions in Iowa)	$.....
Property subject to tax	$.....
Tax due	$.....
Interest on delinquent tax	$.....
TOTAL TAX DUE ON THE.....DAY OF .....19..	$.....

INSTRUCTIONS

No. 1. It is *absolutely* necessary that the name, relationship and address of each beneficiary be given.

No. 2 If any of the land is encumbered by a mortgage or other lien, state the amount of such encumbrance following the description of the land.

No. 3. Only *state and local* taxes due and payable on January 1st of the year of the decedent's death are to be deducted. Taxes due the United States as Income Tax or Inheritance Tax are not to be deducted, nor is inheritance tax paid in other states to be deducted.

No. 4. Appraisers' fees are fixed by law at $3.00 per day and five cents per mile for each mile traveled going and coming. Sec. 1290-a, Supplemental Supplement, 1915.

No. 5. Only such fees as an Executor, or Administrator, is entitled to by law are to be deducted. Sec. 3415 of the Code.

No. 6. When complete send this report to the Treasurer of State, Des Moines, Iowa.

No Final Settlement With Any Executor or Trustee to be Approved Until Tax Paid.—Sec. 1480 of the Code. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this chapter upon any property or interest therein belonging to the estate to be paid by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment.

See the following section and the notations thereunder, as it should prevail in case of a conflict with the above section of the Code, having been enacted at a later date.

Settlement with Executors, etc., Void if Taxes Are Not Paid.—Sec. 1481-a19, Supplement, 1913. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein, that is hereby made payable by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the tax, the clerk shall record the same upon the collateral inheritance tax lien book in his office.

See the preceding section.

In the case of Ryan v. Hutchinson, Judge (1913) 161 Iowa 575, 143 NW. 439, the Treasurer of State filed an objection to the final report of the executor of the estate of Patrick F. Ryan, which was sustained by the court. Time was granted the plaintiff in which to file a bill of exceptions to the ruling but no bill was filed. Instead, the plaintiff sued out a writ of certiorari, claiming that the district court was without jurisdiction to hear the objections made by the Treasurer of State. It was held by the supreme court that certiorari will not lie unless the inferior tribunal had action without jurisdiction or illegally, and there is no other plain, speedy and adequate remedy. Errors that are not illegal or void for want of jurisdiction must be cured by a proper appeal and not by certiorari.

Binding Effect of Discharge of Administrator by a Court of One State Upon Another State—The fact that a decree may have been entered in another state finding that all claims presented against the estate have been paid, including taxes and inheritance taxes and ordering that the

administrator and his sureties be relieved of any obligations thereafter incurred will not prevent another state from insisting upon the payment of the inheritance tax in its jurisdiction provided such decree may be lawfully set aside in the state in which it is rendered on a proper showing.

If such decree or judgment cannot be set aside in the state where rendered it cannot be attacked elsewhere under the provision of the Constitution of the United States whereby each state is bound to give full faith and credit to the judgments of the courts of other states of the Union. U. S. Const. Art. 4, Sec. 1; Fred Miller Brewing Co. v. Capital Ins. Co., (1900) 111 Iowa 590; 82 NW. 1023; 82 Am. St. Rep. 529.

ILLINOIS.

Thus, where a court in California discharged an administrator under a decree, as stated above, which was binding only on "heirs, legatees, or devisees" and which could have been set aside by the courts of that state, it was held that it did not prevent the State of Illinois from thereafter assessing its inheritance tax on the same property, when later brought within the State of Illinois. People v. Union Trust Co., 255 Ill. 168; 99 NE. 377; L. R. A. 1915D, 450.

UNITED STATES.

For a case where the State of New York was held to be barred from collecting its inheritance tax after discharge of an executor by a court in the State of New Jersey, see Tilt v. Kelsey, 207 U. S. 43; 52 L. Ed. 95; 28 Sup. Ct. Rep. 1. It was there held that on the record presented, the decree of the New Jersey court was a final bar to all claims as against the estate and against the executors and distributees of the property.

Effect of Discharge of Administrator Before Payment of Tax—The foregoing sections provide that failure to pay the tax required by law renders void any discharge of an administrator by a court. It is no protection to the administrator to plead such release, nor could his bondsman do so as the statute affirmatively provides the discharge is void. The beneficiary who receives property from an estate without paying the inheritance tax thereon takes such property subject to the lien of the tax, interest and other penalties of the law. And furthermore such person is personally liable for the tax. See secs. 1481-a17 and 28, Supplement, 1913, pages 83 and 53 of this volume.

It has frequently been held that the failure of an administrator to pay the tax will not relieve him from liability even though he had in good faith filed his reports and been discharged thereunder by order of court.

CALIFORNIA.

Re Lander, (1907) 6 Cal. App. 744; 93 Pac. 202.

MASSACHUSETTS.

Attorney General v. Rafferty, (1911) 209 Mass. 321; 95 NE. 747.

NEW YORK.

Re Hacket, (1895) 14 Misc. 282; 35 N. Y. Sup. 1051. Re Hubbard, (1897) 21 Misc. 566; 48 N. Y. Sup. 869.

While the general rule is that an executor who is discharged by order of the court without having paid the inheritance tax is personally liable therefor, yet where the estate shrinks through the destruction of the property or the assets are obliterated of all value during the process of administration, without fault or delinquency on the part of the executor, he is entitled to be discharged even though the tax has not been paid where the assets of the estate are insufficient to meet the costs of administration. For a case on this point, see Re Meyer, 209 N. Y. 386; 103 N. E. 713; L. R. A. 1915C, 615.

Bonds—Conditions of—Amount.—Sec. 1481-a14, Supplement, 1913. All bonds required by this act shall be payable to the treasurer of state and shall be conditioned upon the payment of the tax, interest and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax interest and costs that may be due, but in no case less than five hundred dollars ($500.00) and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the auditor of state to do business in this state.

See page 53 hereof.

The 35th G. A. created the office of Commissioner of Insurance and bestowed all power theretofore existing in the Auditor of State, in relation to insurance, upon the Commissioner of Insurance. Sec. 1683-r3, Supplement, 1913.

Removal of Taxable Property from State—Penalty.—Sec. 1481-a15, Supplement, 1913. It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this act, without paying the said tax to the treasurer of state. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest and costs for which the estate may be liable, but in no case less than two hundred dollars ($200.00) and imprisoned as the court shall direct, until the fine is paid. Provided, however, that the penalty hereby imposed shall not be enforced, if prior to the removal of such property or the proceeds thereof, the

person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest and costs, as is provided in the preceding section hereof.

If two or more persons conspire together to remove property from the State of Iowa in order to avoid taxation they may be convicted of conspiracy and be imprisoned in the penitentiary for not more than three years. Sec. 5059 of the Code.

Duties of County Attorney—Compensation—Another Attorney Employed, When. Sec. 1481-a32, Supplement, 1913. It shall be the duty of the county attorney of each county, when directed by the treasurer of state, to perform such legal services as shall be necessary in the enforcement of said tax, but such attorney shall have no authority to receipt for or receive any of such tax. He shall advise and assist the clerk and appraisers in the discharge of their duties in collateral inheritance tax matters, and see that the notices required by law are properly made and returned. In each estate where the county attorney has performed such legal services, he shall receive a compensation as follows, viz.: on the first one hundred dollars ($100.00) or fraction thereof of tax paid, ten per cent; on the excess of one hundred dollars ($100.00) to five hundred dollars ($500.00) five per cent; on the excess of five hundred dollars ($500.00) to one thousand dollars ($1,000.00) three per cent; on all sums in excess of one thousand dollars ($1,000.00) one per cent but not to exceed one hundred and fifty dollars ($150.00) from any one estate. Provided, however, that except in cases of litigation requiring the filing of a petition or answer in court, the fee in any case shall not exceed the sum of fifty dollars ($50.00). When the treasurer of state has issued his receipt for the tax in an estate, in which the county attorney has been directed to render legal services, and has performed such services, the treasurer of state shall certify the amount due for such services to the auditor of state, who shall issue his warrant on the treasurer of state in favor of the said county attorney for the sum due. If the county attorney is attorney for the executor, administrator or other person interested in the estate, the treasurer of state may employ another attorney to represent the state.

For wilful or habitual neglect or refusal to perform the duties of his office, a county attorney may be removed from office by the district court or judge under the provisions of sec. 1258-a, Supplement, 1913, as amended by 37th G. A. chap. 391.

Conflicting Claims for Attorney Fees—How Settled.—Sec. 1481-a33, Supplement, 1913. In the event of uncertainty or of conflicting claims as to fees due county attorneys or clerks under this act, the treasurer of state is empowered to determine the amount of fees, to whom payable, and when the same are due, and as far as possible, such determination shall be in accord with fixed rules made by the treasurer of state.

District Court to Enforce Payment of Tax.—Sec. 1481-a34, Supplement, 1913. On the first day of each regular term, the court shall require the clerk to present for its inspection the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors and trustees which have been filed pursuant to this act, since the last preceding term. The county attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts, which in his judgment may aid the court in enforcing the general observance of the collateral inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record, directing the county attorney to institute such proceedings forthwith. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the county attorney, the treasurer of state, or other person, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the county attorney shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. At any such hearing any person may be required to appear and answer as to his knowledge of any such estate or property. If upon any such hearing the court is satisfied that any property of the decedent or any property devised, granted or donated by him, is subject to the tax, the same proceedings shall be had as in other cases, so far as applicable.

Costs Taxed to Estate.—Sec. 1481-a35, Supplement, 1913. In all cases where an estate or interest therein so passes as to be liable

to taxation under this act, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings and to discharge the lien, all costs, as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the treasurer of state, who shall, if said costs be correctly certified, and the case has been finally terminated, and the tax if any due has been paid, present the claim to the executive council to audit, and said claim being allowed by said council, the auditor of state is directed to issue a warrant on the treasurer of state in payment of such costs.

See the annotation under the heading of "debts" page 48 hereof.

Jurisdiction of Court as to Matters Relating to Collateral Inheritance—Treasurer of State to be Plaintiff.—Sec. 1481 of the Code. The district court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this chapter, subject to appeal as in other cases, and the treasurer of state shall in his name of office represent the interests of the state in any such proceeding.

See the following section which should prevail in case of a conflict as it was enacted after the passage of the section of the Code above quoted.

The supreme court had occasion to consider this section of the Code in the case of Re Culver's Estate, (1911) 153 Iowa 461-467; 133 NW. 722, wherein it was said: "From this it appears that the proceedings, while special, are at law, and not equitable in character; and that the rules applicable to appeals in law cases must govern."

Jurisdiction.—Sec. 1481-a20, Supplement, 1913. The district court in the county in which some part of the property is situated, of the decedent who was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered, shall have jurisdiction to hear and determine all questions regularly brought before it in relation to said tax that may arise affecting any devise, legacy, annuity, transfer, grant, gift or inheritance, subject to appeal as in other cases, and the treasurer of state shall in his name of office, with all the rights and privileges of a party in interest, represent the state in any such proceedings.

See the preceding section and the notation thereunder.

Appellate Procedure—Matters relating to the imposition and collection of the collateral inheritance tax are to be tried on appeal as an action at law and not as in equity. Lamb v. Morrow, (1908) 140 Iowa 89-94; 117 NW. 1118; 18 L. R. A. (ns) 226. Such cases are not triable *de novo* in the supreme court, but must be upon exceptions duly taken before the trial court, and this is true although the matter could not have been submitted to a jury in the first instance. The proceedings are at law and are reviewable as such. Gould v. Morrow, (1911) 153 Iowa 461-469; 133 NW. 722. Cited with approval in Klopp v. C., M. & St. Paul Ry. Co., (1912) 156 Iowa 466-469; 136 NW. 906.

Construction.—Sec. 1481-a45, Supplement, 1913. In the construction of this act, the words "collateral heirs" shall be held to mean all persons who are not specifically exempt from the tax imposed by the provisions hereof. The word "person" shall include a plural as well as singular, and artificial as well as natural persons. This act shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the treasurer of state only when especially authorized by him to do so. This act shall apply to all estates subject to taxation under the law repealed by this act if the tax for which such estates are liable shall not have been paid prior to the taking effect of this act.

"It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions." Herriott v. Bacon, (1900) 110 Iowa 342; 81 NW. 701. This decision was rendered prior to enactment of foregoing statute.

Repeal.—Sec. 1481-a47, Supplement, 1913. Chapter four (4), of title seven (7), of the supplement to the code, 1907, and chapter ninety-two (92) of the acts of the thirty-third (33) general assembly, and all other acts or parts of acts in conflict herewith, are hereby repealed.

CHAPTER V

TREATIES WITH FOREIGN NATIONS—EFFECT ON IOWA LAW RELATING TO INHERITANCE TAX.

Treaties—Who Has Authority to Make or Change—This question of Treaties and Treaty Making Power is entirely too broad to be considered fully in a work of this character, hence, nothing more than a general statement of a few important principles is given, and only such matters are discussed as will be useful in properly understanding our treaties in relation to inheritance taxation.

So far as this nation is concerned all our treaties are made by the federal government. The various states have delegated that power to the United States by providing in the constitution that the president of the United States "shall have power, by and with the advice and consent of the senate, to make treaties provided two-thirds of the senators present concur." Art. II, sec. 2, par. 2.

It will therefore be noted that the individual states have no treaty making power.

The federal constitution provides that the "constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." Art. VI, par. 3.

Any nation making a treaty with this nation must take notice of the limitation upon the treaty making power of the President, who is aided by the Senate. There are certain rights fixed by the constitution of the United States which cannot be changed or modified by any treaty. Among these rights are a trial by a jury in all criminal prosecutions, and that a person cannot be compelled to be a witness against himself, etc. Furthermore, no agreement entered into is valid without the consent of the Senate.

The wisdom of our forefathers in thus protecting and limiting the treaty making power of our government cannot be more clearly shown than by pointing to the method of treaty-making ordinarily followed in Europe. The late Czar of Russia had absolute power in the matter of making treaties and could provide in such an agreement that subjects of Russia were to be denied all the rights of citizenship without reservation; he could enter into a secret treaty and thus barter and sell his subjects and their belongings as if they were mere chattels. The power of the emperor of Germany is far beyond that granted our president but not as absolute as that of the ex-Czar.

It sometimes happens that the provisions of a treaty conflict with the provisions of an act of Congress which is passed after the treaty has been ratified. For discussion of such cases, see page 128 hereof.

Form of Treaties—Language in Which Written—In the case of formal treaties it is customary to make, sign and seal a duplicate treaty for each of the contracting powers. In event the contracting powers have no common language, the treaty is usually made out in the language of both, often the text appearing in parallel columns or on opposite pages. Where there are several contracting powers having various languages the treaty is often drawn up in one language. In Europe it is the custom to use the French language for this purpose. See Crandall's "Treaties, Their the French language for this purpose. See Crandall's "Treaties, Their Making and Enforcement," sec. 6.

In Re Estate of Peterson, (1915) 168 Iowa 511; 151 NW. 66, the meaning of the words "goods and effects" in the treaty between the United States and Sweden was determined by the French meaning of the term, since the treaty was written in French.

Definition of Terms—There are terms of international law appearing in several of the treaties which have a definite legal meaning and are to be thus considered in construing treaties where the terms appear. The terms are as follows:

"*Ab intestato*" means from an intestate, or from one who dies without having made a will. In Re Estate of Peterson, (1915) 168 Iowa 511; 151 NW. 66; affirmed by U. S. Supreme Court (1917), 38 Sup. Ct. Rep. 111; 245 U. S. ...; 62 L. Ed. 144.

"*Droit d'aubaine*," a right recognized by an old French law whereby "all the property of a deceased foreigner, whether movable, or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming *ab intestato* or under a will of the deceased." Opel v. Shoup, (1896) 100 Iowa 407, 69 NW. 560; 37 L. R. A. 583.

"*Droit de detraction*" means a right to levy a tax upon the removal from one state or country to another of property acquired by succession or testamentary disposition; however it does not cover taxes upon the succession to or transfer of property. In Re Estate of Peterson, *supra.*

"*Goods and effects*" has been held to include real property as well as personal property in several cases. Adams v. Akerlund, 168 Ill. 632; 48 NE. 454; Re Stixrud, 58 Wash. 339; 109 Pac. 343; 33 L. R. A. (ns) 632; Ann. Cas. 1912A, 850. A *contra* view expressed in Meier v. Lee, (1898) 106 Iowa 303; 76 NW. 712, but the soundness of the holding is questioned by inference in Re Estate of Anderson, (1914) 166 Iowa 621; 147 NW. 1098. However, where the original treaty is written in the French language the term "*goods and effects*" should be construed to include real property as the term used in that language cover it. Re Estate of Peterson, *supra.*

Construction—Conflict Between Treaty and Federal Statute—The Supreme Court of the United States in Geofroy v. Riggs, 133 U. S. 258, at 271; 10 Sup. Ct. 295, 298; 33 L. Ed. 642, held that "treaties are to be liberally construed, so as to carry out the apparent intention of the parties to secure an equality and reciprocity between them. As they are contracts between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial, or special sense impressed upon them by local law, unless such restricted sense is clearly intended. And it has

been held by this court that where a treaty admits of two constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred."

The following rule has been held to apply when an act of Congress is claimed to repeal a provision of a prior treaty as well as when two statutes conflict. United States v. Lee Yen Tai, 185 U. S. 213, at pages 221 and 222.

"In the case of statutes alleged to be inconsistent with each other in whole or in part, the rule is well established that effect must be given to both, if by any reasonable interpretation that can be done; that there must be a positive repugnancy between the provisions of the new laws and those of the old; and even then the old law is repealed by implication only *pro tanto*, to the extent of the repugnancy," and that "if harmony is impossible, and only in that event, the former is repealed in part or wholly, as the case may be.' Wood v. United States, 16 Pet. 342; United States v. Tynen, 11 Wall. 88; State v. Stall, 17 Wall. 425; Frost v. Wenie, 157 U. S. 46.

In the event that the state statute conflicts with a treaty, the latter will prevail. See page 41 hereof for a discussion of this matter and for citation of cases.

Doctrine of the Case of Frederickson v. Louisiana.—In this case the Supreme Court of the United States announced a doctrine that has been repeatedly followed by the courts of the Union in dealing with treaties. A brief statement of the facts of the case are necessary to understand the import of the doctrine.

A naturalized citizen of the United States by the name of John David Fink, residing at New Orleans at the time of his death, had bequeathed his property in favor of beneficiaries residing in the kingdom of Wurtemberg and subjects thereof.

The claim of the state of Louisiana for an inheritance tax "was resisted in the District Court, on the ground that it is contrary to the provisions of the third article of the convention between the United States of America and his majesty the king of Wurtemberg, of the 10th April, 1844. That article is, that 'The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the states of the other, by testament, donation, or otherwise; and their heirs, legatees, and donees, being citizens or subjects of the other contracting party shall succeed to their said personal property, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies shall be liable to pay in like cases.' This court, in Mager v. Grima, 8 How. S. C. R., 490, decided that the act of the legislature of Louisiana was nothing more than the exercise of the power which every state or sovereignty possesses of regulating the manner and terms upon which property, real and personal, within its dominion, may be transmitted by last will and testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it. The case before the district court in Louisiana

concerned the distribution of the succession of a citizen of that state, and of property situated there. The act of the legislature under review does not make any discrimination between citizens of the state and aliens in the same circumstances. A citizen of Louisiana domiciliated abroad is subject to this tax. The State v. Poydras, 9 La. Ann. R., 165; therefore, if this article of the treaty comprised the succession of a citizen of Louisiana, the complaint of the foreign legatees would not be justified. They are subject to 'only such duties as are exacted from citizens of Louisiana under the same circumstances.' But we concur with the supreme court of Louisiana in the opinion that the treaty does not regulate the testamentary dispositions of citizens or subjects of the contracting powers, in reference to property within the country of their origin or citizenship. The cause of the treaty was, that the citizens and subjects of each of the contracting powers were or might be subject to onerous taxes upon property possessed by them within the states of the other, by reason of their alienage, and its purpose was to enable such persons to dispose of their property, paying such duties only as the inhabitants of the country where the property lies, pay under like conditions. *The case of a citizen or subject of the respective countries residing at home, and disposing of property there in favor of a citizen or subject of the other was not in the contemplation of the contracting powers, and is not embraced in this article of the treaty.* This view of the treaty disposes of this cause upon the grounds on which it was determined in the supreme court of Louisiana." 64 U. S. (23 How.) 445; 16 L. Ed. 577.

Among the Iowa cases following the doctrine of Frederickson v. Louisiana, *supra*, are In Re Estate of Anderson, 166 Iowa 617; 147 NW. 1098, cited at page 140 hereof, also the Estate of Peterson, 168 Iowa 511; 151 NW. 66; L. R. A. 1916A, 469, affirmed by the Supreme Court of the United States in 38 Sup. Ct. Rep. 111; 245 U. S. ...; 62 L. Ed. 144.

The courts have been consistent in following the doctrine announced in the Frederickson case as may be gathered from a review of the case of Rixner's Succession, 48 La. Ann. 552; 19 So. 597; 32 L. R. A. 177. In this case the testator was an alien residing at her home in Italy, and by will disposed of her property in Louisiana to aliens residing in Italy and subjects thereof. It was therefore held that the legatees were exempt from the ten per cent tax of Louisiana levied against foreigners on succession to property within the State under the provisions of the treaty with Italy. (See page 145 hereof for the Treaty.)

It should be noted that in the Frederickson case that the decedent owner was a resident of Louisiana and a citizen of the United States and that he disposed of his property located in Louisiana to non-resident aliens, and that the court held the treaty did not apply. In the Rixner case, however, the owner was a non-resident alien and disposed of her property in Louisiana to non-resident aliens, the treaty was held to apply. It will be found that many of the treaties do not apply where the decedent owner of the property was a citizen of this state or of the United States.

Most-Favored-Nation-Clause—The embryo of this clause seems to appear first in a treaty made in November, 1226, in which Emperor Frederick II conceded to the city of Marseilles privileges previously granted

to the citizens of Pisa and those of Genoa. These concessions were probprobably dictated by political motives. The next step appears in the treaty between Great Britain and Portugal whereby the subjects of Great Britain were given all of the immunities granted to the "subjects of any nation whatsoever in league with the Portugals." This was in 1642.

After the American Revolution treaties relating to commerce became of great importance and the frequency of the appearance of the clause greatly increased. However, with the advent of American diplomacy, a new construction was put on this "Most-favored-nation-clause." It was held to mean that the advantages granted were to be returned in an equivalent grant to our citizens. Am. Journal of International Law, Vol. 3, page 395.

With the establishment of a constitutional form of government in the United States, there grew up a new and broader view of citizenship. Hence, it is not strange that some of our early treaties considered the rights of our citizens in foreign lands as well as rights pertaining to navigation and commerce. In some of these early treaties the "most-favored-nation-clause" appears, but it was not until the early eighties that the matter was given its fuller meaning. There have been but very few decisions rendered construing this clause in relation to inheritance taxation. Most of the decisions and difficulties encountered have arisen through navigation and commerce. The various views are too extensive to be set forth in a work of this character. However, it is well to bear in mind that the fact that a treaty with "B nation" wherein special privileges are granted to the United States in return for special privileges granted by this nation, does not entitle "C nation" to the same benefits given "B nation" under the "most-favored-nation-clause." The United States and Japan adhere to this view of the "most-favored-nation-clause" while the European nations are opposed to it. A brief statement of a few of our controversies will serve to illustrate the wisdom of the American view.

In 1787 the Netherlands minister protested an Act of the Legislature of Virginia which exempted French brandies imported in French and American vessels from certain duties to which like commodities imported in the vessels of Netherland were liable. John Jay, Secretary for the Department of Foreign Affairs replied, in part, to the claim of Netherlands under the "most-favored-nation-clause," "It would certainly be inconsistent with the most obvious principles of justice and fair construction, that because France purchases, at a great price, a privilege of the United States, that therefore the Dutch should immediately insist, not on having the like privileges at the like price, but without any price at all." Secret Journals of Congress, Vol. IV, page 409.

When we purchased Louisiana from France in 1803, the treaty provided that "the ships of France shall be treated upon the footing of the most-favored-nation" in the ports of the ceded territory. In 1815, Congress passed an act by which the vessels of foreign countries were exempted from discriminatory tonnage duties in our ports, provided such countries granted reciprocal treatment to American ships entering their ports. Great Britain took advantage of this act and exempted our ships.

France took no action with the result that when her ships entered our ports they were obliged to pay a tonnage duty greater than exacted from English ships. In 1817 the French minister called the Department of State's attention to this discrimination and claimed their ships were entitled, under the "most-favored-nation clause," to be classed the same as those of Great Britain. This was denied by our Secretary of State, John Quincy Adams, who pointed out the fact that "the exemption of English vessels is not a free gift, but a purchase at a fair and equal price," and that the treaty "cannot be understood to mean, that France should enjoy as a free gift that which is conceded to other nations as a full equivalent." Further that "if British vessels enjoyed, in the ports of Louisiana, *any gratuitous favor*, undoubtedly French vessels would by the terms of the article, be entitled to the same." Am. State Papers, Foreign Relations, Vol. V, 152-53.

This view of the "most-favored-nation-clause" finds support in the decision of the supreme court of the United States in the case of Bartram v. Robertson, (1887) 122 U. S. 116, 30 L. Ed. 1118; 7 Sup. Ct. Rep. 1115. In this case the plaintiff sought to recover certain duties exacted on the importation of sugar and molasses produced and manufactured on the Island of St. Croix, a part of the dominions of the King of Denmark. Previous to this a treaty, or convention, had been entered into between the king of the Hawaiian Islands and the United States whereby this nation agreed to admit certain articles into our ports free of duty, including sugar and molasses, "for and in consideration of the rights and privileges granted by the United States of America" and "as an equivalent therefor" the king of the Hawaiian Islands agreed to admit certain named articles of American manufacture and growth into the ports of the Hawaiian Islands free from duty.

The plaintiff claimed he was entitled to a refund as the treaty with Denmark provided that the contracting powers would not "grant any particular favor to other nations in respect of commerce and navigation which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession were freely made, or upon allowing the same compensation if the concession were conditional." And further that "no higher or other duties shall be imposed on the importation" of articles from the respective nations than are "payable on the like articles, being the produce or manufacture of any other foreign country."

In summing up the opinion the supreme court says, "our conclusion is, that the treaty with Denmark does not bind the United States to extend to that country, without compensation, privileges which they have conceded to the Hawaiian Islands in exchange for valuable concessions. On the contrary, the treaty provides that like compensation shall be given for such special favors. When such compensation is made it will be time to consider whether sugar from her dominions shall be admitted free from duty."

This case was followed in Whitney v. Robertson, (1888) 124 U. S. 190; 31 L. Ed. 386; 8 Sup. Ct. Rep. 456, involving practically the same state of facts except that the sugar was imported from the Republic of San Domingo.

Our government has insisted upon this view from the first and it has also recognized the principle that a free gift, or privilege, granted to one nation inures to the benefit of all other nations who have a "most-favored-nation-clause" in their treaty with the United States. The case of the American Express Company v. United States, decided by the U. S. Court of Customs Appeals, (Dec. Term 1912) illustrates the converse of the "sugar cases." By the Act of July 26, 1911, sec. 2, chemical wood pulp and sulphide of wood pulp were admitted free from duty when imported into the United States direct from Canada. *There was no consideration given by Canada, nor any concession granted for this favor.* It was therefor held, under the "most-favored-nation-clause," that Norway, Russia, Austria-Hungary, and Germany were entitled to have their wood pulp admitted free of duty as were the products of Canada. Reported also in the American Journal of International Law, Vol. 7, page 891.

Opposed to this is the European view that whenever a favor is granted one nation it *ipso facto* extends the same favor to all other countries with which it has the "most-favored-nation" treaties regardless of consideration. However, it has been uniformly recognized that a nation may make concessions to one of her colonies without regard to the "most-favored-nation-clause," in fact, the clause refers to the "most-favored-foreign-nation."

It does not necessarily follow that by virtue of a "most-favored-nation-clause" being inserted in a treaty in relation to succession of property that the citizens of that nation may claim similar exemption granted by this country to the subjects of a third nation in considertaion of special privileges granted to our citizens. Before the citizen of the first nation can demand the privileges granted a third nation he must show that his nation has granted to the citizens of this country like privileges.

One writer states "that our view of the business is strictly that of *quid pro quo;* special favor for special favor, with no outsider entitled to ask something unless he has given something." The Nation, Vol. 93, page 26.

Who Are Aliens—Non-Resident Aliens—Our statute provides for a higher rate of tax in case of "aliens, who are non-residents of the United States.' In view of the many changes in allegiance brought about by this war, it has been deemed wise to note those who are aliens.

Not only those who are foreign born are aliens but also our own citizens may by their own acts become aliens. This can be accomplished in two ways, 1st, by marriage, and 2nd, by expatriation. Any American woman who marries a foreigner shall take the nationality of her husband. Sec. 3960, U. S. Comp. St. Vol. 4. "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state," Sec. 3959, U. S. Comp. St., Vol. 4.

This last provision is of vital importance at this time. For instance, when a citizen of the United States enters the Canadian or English army, he is obliged to take an oath of allegiance to the King of England, and thus expatriates himself as a citizen of the United States. In order to meet this situation in the present war, Congress has provided a method

for repatriation without going through the necessity of taking out naturalization papers. See Act of October 5th, 1917, Chap. 68; Sec. 3959-a, U. S. Comp. St., Temporary Sup. 1917.

The United States statute further provides: "When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years. Provided, however, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe. And provided also, that no American citizen shall be allowed to expatriate himself when this country is at war." Sec. 3959, U. S. Comp. St. Vol. 4.

The statutes of the United States thus clearly set forth who is an alien. There are two decisions of vast importance in Iowa holding that the term "non-resident alien' does not mean that the alien must be a non-resident of the United States, but rather a non-resident of the State of Iowa. In Re Estate of Gill (1890), 79 Iowa 296; 44 NW. 553; 9 L. R. A. 126. This decision was reaffirmed in Re Estate of Kennedy (1912), 154 Iowa 460; 135 NW. 53, wherein it was held that the decedent and his wife, who were aliens, although living in Indiana were "non-resident aliens" within the meaning of Code sec. 3368. However it will be noted the present statute relating to inheritance taxation states "aliens, who are *non-residents of the United States.*"

Burden of Proof—In Case of Alienage—Our supreme court has announced the rule to be that the one who asserts alienage has the burden of proof. State v. Haynes, (1880) 54 Iowa 109; 6 NW. 156. This rule was further approved in the case of State v. Chamberlin, (1917) ... Iowa ..; 163 NW. 430. It is a query whether this general rule is modified by sec. 1481-a45, Supplement, 1913, page 126 hereof, which provides that that "the words 'collateral heirs' shall be held to mean all persons not specifically exempt from the tax."

Effect of War on Treaties—The question of the effect of the present war upon our treaty with Germany has been reviewed by the Attorney-General's Office, and the following conclusions reached:

"1. That the treaty concluded between Germany and the United States on December 11, 1871, has not been extinguished by reason of the war, but only suspended.

"2. That in all estates wherein the testate or intestate died prior to the declaration of our government of the existence of war between the United States and Germany in which a collateral inheritance tax had already accrued, then and in that event a tax of only five (5) per cent can be assessed and collected.

"3. In all estates wherein the decedent died since the existence of the state of war between the two countries aforesaid, then a tax based upon a percentage of twenty (20) per cent of the value of the property or interest passing should be assessed and collected, except when the bene-

ficiary is a brother or sister of the decedent, in which event the tax should be at the rate of ten (10) per cent.

"The foregoing conclusions refer, of course, to estates in which German citizens and subjects are interested as collateral heirs." Opinion of the Attorney-General, June 28, 1917.

The supreme court of the United States in an early case discussed the effect of war upon a treaty in the following terms:

"But there is a still more decisive answer to this objection, which is, that the termination of a treaty cannot divest rights or property already vested under it. If real estate be purchased or secured under a treaty, it would be most mischievous to admit, that the extinguishment of the treaty, extinguished the right to such estate. In truth, it no more affects such rights, than the repeal of a municipal law affects rights acquired under it. If, for example, a statute of descents be repealed, it has never been supposed that rights of property already vested during its existence, were gone by such repeal. Such a construction would overturn the best established doctrines of law, and sap the very foundation on which property rests. But we are not inclined to admit the doctrine urged at bar, that treaties become extinguished, *ipso facto*, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. Whatever may be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms, in relation to this subject, we are satisfied, that the doctrine contended for is not universally true. There may be treaties of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent arrangement of territorial, and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation, to hold them extinguished by the event of war." Society for Propagation of Gospel v. New Haven, et al., 8 Wheat. (U. S.) 464.

It was further stated in Chirac v. Chirac, 2 Wheat. (U. S.) 259, "It will be admitted that a right once vested does not require, for its preservation, the continued existence of the power by which it was acquired. If a treaty, or any other law, has performed its office, by giving a right, the expiration of the treaty or law cannot extinguish that right."

Whether agreements regulating commercial intercourse are merely "suspended in their operation during the period of the war or revived on the restoration of peace, or are definitely terminated if not expressly renewed, is a question on which writers of international law are not agreed. The practice of nations may, by implication at least, be considered as in degrodation of the doctrine of the revival of such treaties *proprio vigore*." Crandall's "Treaties, Their Making and Enforcement," 2nd Edition, page 451.

When War Begins and When War Ends—In the "Trading with the Enemy Act," Congress has defined "the beginning of war" as: "Midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war." The present war with Germany was declared on April 6th, 1917, and with Austria-Hungary on Dec. 7th, 1917.

"End of war" as defined by Congress is "the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of war' within the meaning of this act." Statutes of U. S., 65th Congress, 1917, Page 412.

ARGENTINE REPUBLIC—TREATY.

Article IX. In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens; and they shall not be charged, in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens, submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country for the benefit of the creditors and legal heirs.

Article X. The citizens of the United States residing in the Argentine Confederation, and the citizens of the Argentine Confederation residing in the United States, shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans, requisitions or military exactions; and they shall not be compelled, under any pretext whatever, to pay any ordinary charges, requisitions or taxes, greater than those that are paid by native citizens of the contracting parties respectively. U. S. Treaties and Conventions, Vol. I, Page 23.

AUSTRIA-HUNGARY—TREATY OF 1848.

(Treaty suspended on December 7, 1917, by declaration of war between the United States and Austria-Hungary. The Official Bulletin of December 8, 1917, page 5. Also see page 134 hereof.)

Article I. The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property

within the states of the other, by testament, donation, or otherwise; and their heirs, legatees and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country, where the said property lies, shall be liable to pay in like cases.

Article II. Where, on the death of any person holding real property, or property not personal, within the territories of one party, such real property would, by the laws of the land, descend on a citizen or subject of the other were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of two years to sell the same, which term may be reasonably prolonged according to circumstances, and to withdraw the proceeds thereof, without molestation, and exempt from any other charges than those which may be imposed in like cases upon the inhabitants of the country from which such proceeds may be withdrawn. U. S. Treaties and Conventions, Vol. 1, page 34.

BADEN & BAVARIA. (See German Empire.)

BELGIUM.

We have a number of treaties with Belgium but none of them deal with inheritance taxation. Article XV. of the Treaty of 1880 provides:

In the case of the death of any citizen of the United States in Belgium, or of a citizen of Belgium in the United States, without having any known heirs or testamentary executor by him appointed, the competent local authorities shall give information of the circumstance to the consuls or consular agents of the nation to which the deceased belongs, in order that the necessary information may be immediately forwarded to parties interested.

Consuls general, consuls, vice-consuls and consular agents shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent or minor heirs, or creditors, until they are duly represented. U. S. Treaties and Conventions, Vol. 1, page 99.

BOLIVIA—TREATY OF 1858, Amended and Proclaimed 1863.

Article XII. The citizens of each of the contracting parties shall have power to dispose of their personal goods within the

jurisdiction of the other, by sale, donation, testament, or otherwise, and their representatives, being citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such duties only as the inhabitants of the country where such goods are, shall be subject to pay in like cases. And if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the longest period allowed by the law to dispose of the same as they may think proper, and to withdraw the proceeds without molestation, nor any other charges than those which are imposed by the laws of the country. U. S. Treaties and Conventions, Vol. 1, page 117.

BORNEO—TREATY OF 1850.

Part of Art. II. The citizens of the United States of America shall have full liberty to enter into * * * * all parts * * * * of Borneo, and they shall enjoy therein all the privileges and advantages, with *respect to commerce or otherwise*, which are now or which may hereafter be granted to the citizens or subjects of the most favored nation; and the subjects of the Sultan of Borneo * * * * shall enjoy in the United States of America all the privileges and advantages with respect to commerce, or otherwise, which are now or may hereafter be granted therein to the citizens or subjects of the most favored nation. U. S. Treaties and Conventions, Vol. 1, pages 130 and 131.

BRAZIL—TREATY OF 1828.

Article XI. The citizens or subjects of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other by sale, donation, testament or otherwise; and their representatives, being citizens or subjects of the other party, shall succeed to said personal goods whether by testament, or *ab intestato*, and they may take possession thereof, either by themselves, or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein said goods are shall be subject to pay in like cases: and if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance

on account of their character of aliens, there shall be granted to them the term of three years to dispose of the same as they may think proper, and to withdraw the proceeds without molestation, nor any other charges than those which are imposed by the laws of the country. U. S. Treaties & Conventions. Vol. 1, page 136.

BREMEN. (See German Empire.)

REPUBLIC OF COLOMBIA—TREATY OF 1846.

Article XII. The citizens of each of the contracting parties shall have power to dispose of their personal goods or real estate within the jurisdiction of the other, by sale, donation, testament, or otherwise; and their representatives, being citizens of the other party, shall succeed to their said personal goods or real estate, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such duties only as the inhabitants of the country wherein said goods are shall be subject to pay in like cases. U. S. Treaties and Conventions, Vol. 1, page 305.

While we have a "most-favored-nation-clause" in our treaty with Colombia, yet it applies only "in respect of commerce and navigation."

CONGO—TREATY OF 1891.

Article II. In all that concerns the acquisition, succession, possession, and alienation of property, real and personal, the citizens and inhabitants of each of the high contracting parties shall enjoy in the territories of the other all the rights which the respective laws accord or shall accord in these territories to the citizens and inhabitants of the most favored nation. U. S. Treaties and Conventions, Vol. 1, page 329.

COSTA RICA—TREATY OF 1851.

Article VIII. In whatever relates to * * * the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or in any other manner whatsoever, * * * the citizens of the two high contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens, and they shall not be charged in any of these

respects with any higher imposts or duties than those which are paid or may be paid by native citizens. U. S. Treaties and Conventions, Vol. 1, page 344.

The "most-favored-nation clause" with Costa Rica is restricted to matters of commerce and navigation.

DENMARK—TREATY OF 1826.

Article VII. The United States and his Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects, or otherwise than are or shall be payable in each state, upon the same, when removed by a citizen or subject of such state, respectively. U. S. Treaties and Conventions, Vol. 1, page 375.

"Most-favored-nation-clause" is limited to "commerce and navigation."

The Supreme Court had occasion to interpret the foregoing section of the treaty with Denmark in the case of Re Estate of Anderson, (1909) 166 Iowa, 617; 147 N. W. 1098, where the decedent was a resident and citizen of Iowa and she left a will bequeathing all her property to residents of the kingdom of Denmark. The State of Iowa collected the higher rate of tax provided for by section 1481-a Supplement to the Code, 1913, in case of bequests to non-resident aliens. The devisees objected to this tax and contended that they should not be taxed greater than citizens of this state in view of the treaty existing between the two countries. The supreme court reaffirmed the principle that the tax was not imposed upon the property or on the person, but on the right to the succession or receipt of property, and therefore there was no tax being levied on the property of the devisees. Affirmed, 245 U. S. 170; 38 Sup. Ct. Rep. 109; 62 L. Ed. ...

The case further adhered to the rule announced in Frederickson v. Louisiana, 64 U. S. (23 How.) 445: 16 L. Ed. 577, where it was held that "the case of a citizen or subject of the respective countries residing at home, and disposing of property there in favor of a citizen or subject of the other, was not in contemplation of the contracting powers, and is not embraced in the article of the treaty." In view of this rule the State of Iowa was properly exercising its authority in taxing the transfer of the property in this state bequeathed to the residents of Denmark, and did not violate any rights acquired by the existing treaty in doing so.

FRANCE—TREATY OF 1853.

Article VII, Part of. In all the states of the Union, whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of

possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously or for value received, by donation, testament or otherwise, just as those citizens themselves; and in no case shall they be subjected to taxes on transfer, inheritance, or any others different from those paid by the latter, or to taxes which shall not be equally imposed. U. S. Treaties and Conventions, Vol. 1, page 531.

France awards to our citizens the same rights granted her citizens, provided we grant reciprocal rights to her citizens. This article of the Treaty with France was considered in the case of Geofroy v. Riggs, (1890) 133 U. S. 258, 266, wherein it is stated: "This article, by its terms, suspended, during the existence of the treaty, the provisions of the common law of Maryland and of the statutes of that State of 1780 and of 1791, so far as they prevented citizens of France from taking by inheritance from citizens of the United States, property, real or personal, situated therein."

GREAT BRITAIN—TREATY OF 1899.

Article I. Where, on the death of any person holding real property (or property not personal) within the territories of one of the contracting parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and to withdraw the proceeds thereof, without restraint or interference, *and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn*

Article II. The citizens or subjects of each of the contracting parties shall have full power to dispose of their personal property within the territories of the other, by testament, donation, or otherwise; and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, whether resident or non-resident, shall succeed to their said personal property, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases.

Article V. In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the high contracting parties shall in the dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation. U. S. Treaties and Conventions, Vol. 1, page 774 and 775.

By agreement of the contracting powers, the treaty between Great Britain and the United States applies to the following colonies and possessions of Great Britain:

Cape
Fiji
Jamaica
Bahamas
Trinidad
Barbados
Newfoundland
New Zealand
Leeward Islands
Northern Nigeria
South Nigeria
St. Vincent
St. Lucia
Falkland Islands
St. Helena
Sierra Leone
Gambia
Labuan
Mauritius
Gold Coast Colony
South Rhodesia
Australia
Cyprus
Ceylon
Hongkong
Straits Settlements
British Honduras
Grenada
North Borneo
British Guiana
Bermuda
Lagos
British New Guinea
India, including the Native States
Transvaal
Orange River Colony
Basutoland
Bechuanaland protectorates

U. S. Treaties and Conventions, Vol. 1, page 777.

Art. I of foregoing treaty was considered in case of McKeown v. Brown, (1914) Treas., 167 Iowa 489; 149 NW. 593, where one James Murray, a resident of Franklin County, Iowa, died intestate leaving no direct heirs, in fact no heirs appeared to claim the property and it was held to escheat to the State of Iowa. After the payment of the debts all that remained was real property located in four different counties of the State. This property was sold under order of court and the proceeds turned over to the Treasurer of State as no heirs appeared to claim it. Thereafter Mary Ann McKeown, an alien and a resident of Great Britain appeared and claimed to be an heir of the decedent and entitled to the proceeds of the estate. The court held that while the property escheated to the state of Iowa when no heirs appeared, yet the claimant was entitled thereto on proof of heirship. It further held that the treaty above quoted prohibited a greater tax than would be levied upon the right of succession by a citizen of this state as it is expressly provided that the proceeds derived from the sale of real property shall be "*exempt from any succession, probate or administrative duties or*

charges other than those which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn." Therefore five per cent was the limit to be assessed on right of succession to real property by subjects of Great Britain.

It is proper to tax costs against one claiming property that has been ordered escheated to the state, even though the claimant be successful.

The case of McKeown v. Brown, (1914) Treas., 167 Iowa 489; 149 NW. 593, had to deal with the matter of the inheritance tax on succession to real property under the provision of Article One of the foregoing treaty. The case of In Re Estate of Moynihan, (1915) 172 Iowa 571; 151 NW. 504, concerned the inheriting of personal property and was to be determined according to Article II of the foregoing treaty. The supreme court in this case adhered to the rule in the McKeown case, *supra*, and held that five per cent was all that could be lawfully taken by the state for the right to inherit personal property. Furthermore the fact that a testator is, or is not an alien, or citizen of this country has no bearing upon the question of the assessment of the tax, for the treaty specifically provides that the *succession, possession and disposal* of personal property shall be subject only to such restrictions as may be placed upon the right citizens of this state in the succession to property in like cases.

Article V of the foregoing treaty is what is known as the "MOST-RAVORED-NATION-CLAUSE." The supreme court had occasion to consider this clause in the case of Brown v. Daly Estate, (1915) 172 Iowa 379; 154 NW. 602; wherein it was held that if the terms of any treaty with a foreign nation granted to the citizens or subjects of the contracting parties any greater privileges or rights than those enjoyed by the citizens or subjects of the nation whose treaty contains the "Favored-Nation-Clause" that the citizens or subjects of such country should be given and allowed to enjoy the same rights as those granted to the citizen of the nation whose treaty specifically provided for the enjoyment of such privileges.

Thus, Article X of the treaty with Germany provides that in the matter of "successions to inheritances, citizens of each of the contracting parties shall pay in the country of the other such duties only as they would be liable to pay if they were citizens of the country in which the property is situated or the judicial administration of the same may be exercised." Likewise treaties containing similar provisions have been entered into with Honduras (Art. VIII) Nicaragua (Art. VIII) and Argentine (Art. IX). Therefore under our treaty with Great Britain the subjects of that nation were entitled to the same rights as those granted to our citizens under more favorable treaties with other nations.

Further Art. V does not limit itself to the protection of "the right of disposing" but purports to apply to "all that concerns the right of disposing." The right of the donor to give and the donee to receive the gift are interdependent, and are parts of the same thing, and to abridge one is to abridge the other. Therefore the right to dispose of and to receive property both real and personal are covered by this clause,

(see Brown v. Daly Estate, *supra*) and the State of Iowa cannot collect a tax in excess of that applied to citizens of the state in like cases, namely five per cent.

GERMAN EMPIRE—TREATY OF 1871.

(This treaty was suspended by the declaration of war made by Congress on the 6th day of April, 1917.)

Article X. In all successions to inheritances, citizens of each of the contracting parties shall pay in the country of the other such duties only as they would be liable to pay, if they are citizens of the country in which the property is situated or the judicial administration of the same may be exercised. U. S. Treaties and Conventions, Vol. 1, page 553.

By a Protocol, consented to by the Senate on April 24, 1872, it was further agreed that Article X applied "not only to persons of the male sex, but also to persons of the female sex." See U. S. Treaties and Conventions, *supra*.

GREECE.

The Treaty of 1902 with Greece makes no provision for exemption of any sort in the matter of inheritance.

See Art. XI, U. S. Treaties and Conventions, Vol. 1, page 858.

GUATEMALA—TREATY OF 1901.

Articles I and II are substantially the same as those of Great Britain; however, there is no favored-nation-clause in the treaty with Guatemala as with Great Britain. U. S. Treaties and Conventions, Vol. 1, pages 876 and 877.

HAITI.

Treaty with Haiti was denounced by that government to take effect May 7, 1905.

HANOVER. (See German Empire.)

HESSE. (See German Empire.)

HONDURAS—TREATY OF 1864.

Article VIII—(Same as Costa Rica.) U. S. Treaties and Conventions, Vol. 1, page 955.

ITALY—TREATY OF 1871.

Article XXII. The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or other-

wise, and their representatives, being citizens of the other party, shall succeed to their personal goods, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein such goods are shall be subject to pay in like cases.

As for the case of real estate, the citizens and subjects of the two contracting parties shall be treated on the footing of the most favored nation. U. S. Treaties and Conventions, Vol. 1, page 976.

LOUISIANA.

For a case construing this article of the treaty with Italy, see the case of Rixner's Succession, (1896) 48 La. Ann. 552; 19 So. 597; 32 L. R. A. 177, also see page 130 hereof.

JAPAN.

The Treaty of 1894 with Japan is silent as to succession to property. Citizens or subjects of each nation are given full liberty to enter, travel, or reside in any part of the territory of the other nation; and are guaranteed full and perfect protection of their persons and property. But nothing is said as to inheritances. U. S. Treaties and Conventions, Vol. 1, page 1028.

KONGO. (See Congo on page 139 hereof.)

MADAGASCAR. (See France.)

MECKLENBURG-SCHWERIN. (See German Empire.)

MEXICO.

Treaties and Conventions with Mexico have been many but at present no provision exists as to succession to property. The Treaty of 1831 contained a provision on such matters but that treaty was suspended by the war of 1846-47, and revived in general by the Treaty of 1848, but finally denounced by Mexico on November 30, 1881. See Treaties in Force, (1904) page 513.

NEW GRANADA. (See Colombia.)

NICARAGUA.

We formerly had a Treaty with Nicaragua placing the citizens of the contracting parties on the footing of native citizens but this treaty was denounced by Nicaragua, effective October 24, 1902. U. S. Treaties and Conventions, Vol. 2, page 1279.

NORWAY.

The treaty with Norway concerning the effects of deceased persons is the same as the treaty with Sweden. See cases thereunder.

OLDENBURG. (See German Empire.)

ORANGE FREE STATE. (See Great Britain.)

PARAGUAY—TREATY OF 1859.

Article X—Same as Costa Rica, see page 139 hereof. U. S. Treaties and Conventions, Vol. 2, page 1367.

PRUSSIA. (See German Empire.)

RUSSIA—TREATY OF 1832.

Article X. The citizens and subjects of each of the high contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato,* and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same, at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. * * * And where, on the death of any person holding real estate, within the territories of one of the high contracting parties, such real estate would by the laws of the land, descend on a citizen or subject of the other party, who by reason of alienage may be incapable of holding it, he shall be allowed the time fixed by the laws of the country, and in case the laws of the country, actually in force may not have fixed any such time, he shall then be allowed a reasonable time to sell such real estate and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective governments, any other dues than those to which the inhabitants of the country wherein said real estate is situated, shall be subject to pay, in like cases. U. S. Treaties and Conventions, Vol. 2, pages 1517 and 1518.

SAXONY. (See German Empire.)

SCHAUMBURG-LIPPE. (See German Empire.)

SERVIA—TREATY OF 1881.

ARTICLE II. In all that concerns the right of acquiring, possessing, or disposing of every kind of property, real or personal, citizens of the United States in Servia and Servian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nations.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or any other manner whatever, without being subject to any taxes, imposts, or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state. U. S. Treaties and Conventions. Vol. 2, page 1614.

SPAIN—TREATY OF 1902.

The first two paragraphs of Article III of the Treaty with Spain are identical to the first two paragraphs of the Treaty with Great Britain. The third paragraph varies from that existing with Great Britain and is as follows:

In the event the United States should grant to the citizens or subjects of a third power the right to possess and preserve real estate in all the States, territories and dominions of the Union, Spanish subjects shall enjoy the same rights; and, in that case only, reciprocally, the citizens of the United States shall also enjoy the same right in Spanish Dominions. U. S. Treaties and Conventions, Vol. 2, page 1702.

SWEDEN—TREATY OF 1783.

The Treaty with Norway is identical with that in force between Sweden and the United States. In fact, there is but one treaty and that was made with Sweden and Norway before they dissolved their union. At the dissolution, each nation affirmed the treaty in so far as it was within their power to do so.

Article VI. The subjects of the contracting parties in the respective states may freely dispose of their *goods and effects*, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even *ab intestato*, either in person or by their attorney, without having occasion to take out letters of naturalization. These inheritances as well as the capitals and effects which the subjects of the two parties, in changing their dwelling, shall be desirous of removing from the place of their abode, shall be exempted from all duty called "*droit de detraction*" on the part of the government of the two states, respectively.

But it is at the same time agreed that nothing contained in this article shall in any manner derogate from the ordinances published in Sweden against emigrations, or which may hereafter be published, which shall remain in full force and vigor. The United States, on their part, or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper. U. S. Treaties and Conventions, Vol. 2, page 1727.

In Re Estate of Peterson, (1915) 168 Iowa 511; 151 NW. 66; L. R. A. 1916A, 469, affirmed by the Supreme Court of the United States, (1917) 38 Sup. Ct. Rep. 111; 245 U. S. ...; 62 L. Ed. 144, the decedent Peterson was a native of Sweden but a naturalized citizen of the United States living in Plymouth County, Iowa. He died intestate, unmarried, and without any direct heirs. The claimants to his estate were nephews and nieces, or their surviving spouses or children, also one nephew and one niece who were naturalized citizens living in Illinois and Wisconsin, respectively. The heirs tendered the sum of $848.95 to the treasurer of state, being five per cent of the value of the property. The state insisted it was entitled to twenty per cent on the property passing to the non-resident alien heirs. The heirs objected claiming they should all be subject to the five per cent tax. There were other questions raised, but a statement of the facts out of which they grew are not so important as to require detailing here.

The court in construing the treaty held the words "goods and effects" included real as well as personal property since the original treaty was written in the French language and the terms used in the French included real property. It further held that the treaty allowed the subjects of the contracting powers to receive property "*ab intestato*," that is from a decedent who died without having made a will. That while the subjects of the two powers could remove property from one country to another and "be exempt from all duty, called "*droit de detraction*," yet the term did not exempt the heirs from paying the inheritance tax as it is not a tax on the property but on the right to take the property of a decedent by will or by virtue of law;

that the term "*droit de detraction*" means a right to levy a tax upon the removal from one state or country to another of property acquired by succession or by virtue of a will. In this state the tax is deducted before the property passes, therefore there was no tax on the removal of the property, or "*droit de detraction.*"

The court further held that there was nothing in the treaty guaranteeing uniformity of tax on the right to succession and therefore the state could assess non-resident aliens twenty per cent and aliens who were naturalized five per cent of value of property on right to succession thereto.

This further statement should be made as to the levying of a tax "*droit de detraction*"—suppose the non-resident alien heir did not desire to remove the property, or the proceeds thereof, from this state, could he successfully maintain that he was entitled to the succession of the property free from our collateral inheritance tax for the reason that he did not desire to remove the property from this state? The answer is clear that he could not escape the tax by such a plea for the tax is not on the property or its removal but on the right to succession thereto.

This case was affirmed by the Supreme Court of the United States on December 10th, 1917; 38 Sup. Ct. Rep. 111; 245 U. S. ....; 62 L. Ed. ..., wherein it was held that the treaty merely contracted against departure by discrimination, by either of such countries against the citizens of the other and their property, but the treaty was not applicable in this case as the decedent was not a citizen of Sweden but of the United States (following rule of Frederickson v. Louisiana, 23 How. 445; 16 L. Ed. 577).

In the case of Duus v. Brown, tried at the same time as the above case and out of the same facts it was held that Article II of Treaty with Sweden relating to the most-favored-nation was restricted by its terms to matters of commerce and navigation.

NORTH DAKOTA.

In the case of Moody v. Hagen, 162 NW. 704 (N. D.), the supreme court of North Dakota followed the rule announced in Re Peterson's Estate, *supra*, where it appeared that the decedent was a citizen of the United States, domiciled in Fargo, North Dakota, and wherein one Elina A. Skarderud, a subject and resident of Norway was held to be subject to the payment of a tax equal to twenty-five per cent as provided for in case of succession by non-resident aliens.

North Dakota supreme court followed the case of Re Peterson, *supra*, and approved of it in every respect. They further add, however, that the treaty clearly relates only to the rights and privileges of the subjects of the United States in Norway and the subjects of Norway in the United States, and those who take or inherit from them. And that in this particular case the treaty was in no way applicable, as before pointed out, since the decedent was not a citizen of Norway, but of North Dakota and of the United States.

WASHINGTON.

Both of the foregoing decisions are *contra* to the holding of the Supreme Court of Washington in the case of Estate of Stixrud, 58 Wash. 339; 109 Pac. 343; 33 L. R. A. (ns) 632, in construing the effects of the treaty existing between Sweden and the United States.

SWITZERLAND—TREATY OF 1850.

Article V. The citizens of each one of the contracting parties shall have power to dispose of their personal property within the jurisdiction of the other, by sale, testament, donation, or in any other manner; and their heirs, whether by testament or *ab intestato*, or their successors, being citizens of the other party, shall succeed to the said property or inherit it, and they may take possession thereof, either by themselves or by others acting for them; they may dispose of the same as they may think proper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated shall be liable to pay in a similar case. * * *

The foregoing provisions shall be applicable to real estate situated within the states of the American Union, or within the Cantons of the Swiss Confederation, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the state or in the Canton in which it may be situated, there shall be accorded to the said heir, or other successor, such terms as the laws of State or Canton will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty and without paying to the government any other charges than those which in a similar case would be paid by an inhabitant of the country in which the real estate may be situated. U. S. Treaties and Conventions, Vol. 2, page 1766.

TONGA—TREATY OF 1886.

Article II. The citizens of the United States shall always enjoy, in the dominions of the King of Tonga, and Tongan subjects shall always enjoy in the United States, whatever rights, privileges and immunities are now accorded to citizens or subjects of the most-favored nation, and no rights, privileges or immunities

shall be granted hereafter to any foreign state or to the citizens or subjects of any foreign state by either of the high contracting parties, which shall not be also equally and unconditionally granted by the same to the other high contracting party, its citizens or subjects; it being understood that the parties hereto affirm the principle of the law of nations that no privilege granted for equivalent or on account of propinquity or other special conditions comes under the stipulations herein contained as to favored nations. U. S. Treaties and Conventions, Vol. 2, pages 1781-1782.

TWO SICILIES. (See Italy.)

WURTEMBERG. (See German Empire.)

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